108-543

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 263.

JAMES A. HAWLEY, COUNTY CLERK OF LEE COUNTY, ILLINOIS, PLAINTIFF IN ERROR,

VS.

THE UNITED STATES, EX REL. J. H. FAIRBANKS, WILLIAM B. SKINNER, GEORGE THOMAS, AND CAROLINE C. WETMORE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED SEPTEMBER 14, 1880.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, before the judges thereof, on Saturday, the 29th day of November, in the year of our Lord one thousand eight hundred and seventy-nine, and of our Independence the one hundred and fourth.

WILLIAM H. BRADLEY, *Clerk.*

THE UNITED STATES OF AMERICA, EX REL. J. H. Fairbanks, William B. Skinner, George Thomas, and Caroline C. Wetmore,
vs.
JAMES A. HAWLEY, COUNTY CLERK OF LEE County, Illinois.
} Mandamus.

NORTHERN DISTRICT OF ILLINOIS, *sct:*

Be it remembered that on the twenty-fourth day of October, A. D. 1879, came the said plaintiffs, by Thomas S. McClelland, esq., and Messrs. Roberts and Hutchinson, their attorneys, and filed in the office of the clerk of the circuit court of the United States for the northern district
2 of Illinois, at Chicago, in the district aforesaid, their bond for costs and petition for a writ of mandamus in said entitled cause, which said bond and petition are, respectively, in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court, October term, A. D. 1879.

THE UNITED STATES OF AMERICA, UPON THE relation of J. H. Fairbanks et al.,
vs.
JAMES A. HAWLEY.
} In mandamus.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by said plaintiff, hereby agree and stipulate that execution may issue against my property for any costs taxed against it. Dated this 24th day of October, A. D. 1879.

GEO. B. EARL.

(Endorsed:) Filed Oct. 24th, A. D. 1879. Wm. H. Bradley, clerk.

Petition for writ of mandamus.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

3 Circuit court of the United States. October term, A. D. 1879.

To the honorable the judges of said court:

Your petitioners, J. H. Fairbanks, who is a citizen of the State of Massachusetts; William B. Skinner, who is a citizen of the State of New York; George Thomas, who is a citizen of the State of New York; Caroline C. Wetmore, who is a citizen of the State of New York, respectfully show unto the court that on the 13th day of March, A. D. 1878, by the judgment of said court the said Fairbanks recovered a judgment against The Town of Amboy, in the county of Lee, and State of Illinois, within said district, for the sum of twenty-four hundred and forty-nine dollars ($2,449.00), and the further sum of thirty-six and $\frac{12}{100}$ dollars ($36.12) costs of suit.

That on the 24th day of January, A. D. 1878, by the consideration and judgment of said court, the said William B. Skinner recovered a judgment against said The Town of Amboy for the sum of two thousand and eighteen and $\frac{50}{100}$ dollars ($2,018.50) damages, and forty-seven and $\frac{10}{100}$ dollars ($47.10) costs of suit.

That on the 29th day of November, A. D. 1875, the said George Thomas recovered a judgment in said court against said The Town of Amboy for
the sum of eight hundred and sixty-six dollars ($866.00) and forty-
4 three and $\frac{90}{100}$ dollars ($43.90) costs of suit.

That on the 17th day of December, A. D. 1875, the undersigned, Caroline C. Wetmore, by the consideration and judgment of said court, recovered a judgment against said The Town of Amboy for the sum of three thousand eight hundred and thirty-six and $\frac{14}{100}$ dollars ($3,836.14) damages, and the further sum of fifty and $\frac{40}{100}$ dollars ($50.40) costs of suit.

Also that on the 20th day of June, A. D. 1876, the said Caroline C. Wetmore recovered another judgment against said The Town of Amboy for the sum of one thousand and fifty-eight and $\frac{33}{100}$ dollars ($1,058.33), and thirty-one and $\frac{50}{100}$ dollars ($31.50) costs of suit.

As by the records and files of said court in each and every of said cases will more fully and at large appear, and to which reference is hereto had for particulars.

Your petitioners further aver that said judgments and each and every of them were recovered upon instruments called railroad interest warrants or coupons detached from railroad bonds, and were issued by said The Town of Amboy under and by virtue of an act of the legislature of the
State of Illinois, entitled "An act to incorporate the Chicago and
5 Rock River Railroad Company," approved and in force March 24,
1869, and which by its terms was made a public act.

Your petitioners further show unto the court that the terms and conditions of said act of March 24, 1869, have been fully complied with, and that your petitioners are, and have been from the date of the issue of the bonds from which said coupons were cut, the owners of the coupons sued on and the bonds respectively from which they were detached, as shown by the pleadings in said several cases respectively, and upon which said respective judgments were obtained.

Your petitioners further aver that said judgments, and each and every of them, have been duly credited and allowed by the auditing town board of said Town of Amboy, as provided by law, but your petitioners aver that the town clerk of said Town of Amboy, whose lawful duty it is to certify to the county clerk of said Lee County, on or before the second Tuesday in August in each and every year, the amount of taxes to be levied and collected to meet all debts and demands and obligations against said town for the current year, for the purpose of having said county clerk extend the same upon the tax or collector's books of said town, and thereby make provision for assessing and collecting taxes upon the taxable prop-
erty of said town to pay said judgments and costs, and each and
6 every of them, and interest upon the same to the time of pay-
ment, fraudulently colluding and conniving with the other officers and the people of said Town of Amboy with the design of preventing the collections of said judgments, has from year to year since said judgments were obtained wholly failed and refused to certify said judgments, or any or either of them, to said county clerk, and in fraud of the rights of your petitioners has absconded and kept himself concealed to avoid and escape the process of this court, or any rule of this court requiring him as such clerk to execute the duty of his office in that behalf; and, as your petitioners are advised and believe, the said town clerk has so absconded and concealed himself for the purposes aforesaid in collusion with the people of said town and at the expense of the said town.

Your petitioners further show that by the terms of said act of the legislature, entitled as aforesaid, it was therein provided and made the duty of the county clerk of said Lee County, annually, after the execution and delivery of said bonds and coupons, to compute and assess upon all the taxable property of said Town of Amboy a sum sufficient to pay the interest warrants or coupons attached to said bonds and the said bonds them-
selves as they severally become due and payable, as well as the
7 costs of collection and disbursement, and extend such tax upon the
tax and collector's books of said town as other taxes are extended, and to assess upon the property of said town an annual rate sufficient to provide a fund for the redemption of the principal and interest of said bonds as they matured and became due.

Your petitioners further show that although said judgments, and each and every of them, were obtained upon interest coupons cut from the bonds of said town issued under said act of March 24, 1869, a tax for the payment of which the county clerk of said Lee County was by law directed to compute and assess, and extend upon the collector's books of said town as other taxes annually, as said interest coupons might mature, yet the said county clerk of said county has neglected and refused, and still does neglect and refuse, to compute and assess upon the taxable property of said town any tax whatever to meet and pay said interest as it has matured and become due and payable.

Your petitioners further aver that said judgments, and each and every of them, and interest upon the same, and the costs of recovering the same, still remain unpaid, and no provision has been made by said town for the payment of the same or any part thereof.

Your petitioners further show that on the 5th day of September, A. D. 1879, said judgment creditors caused certified copies of said judgments, and each and every of them, with portions of the pleadings upon which the same were recovered, and a notice in each case setting out in
8 detail what said judgments, and each of them, were based upon, with affidavits and a demand in each case attached thereto requiring James A. Hawley, esq., the county clerk of said Lee County, to compute and assess upon all the taxable property in said Town of Amboy a sum sufficient to pay said judgments, and each and every of them, and interest on the same to date of payment, and costs of suit in each case, together with the costs of collecting and disbursing such taxes, and to extend such taxes upon the collector's books of said Town of Amboy for the year A. D. 1879, which said notices, demand, &c., or copies of which, said claimants attach hereto and make a part of this petition, and ask that the same be taken and considered by this court as if they were incorporated in the body of this petition.

Said notice, &c., in the case of Fairbanks vs. The Town of Amboy is marked "Exhibit A;" said notice, &c., in the case of Skinner vs. The Town of Amboy is marked "Exhibit B;" said notice, &c., in the case of Thomas vs. The Town of Amboy is marked "Exhibit C;" said notice, &c., in the case of Wetmore vs. The Town of Amboy is marked "Exhibit D."

Your petitioners further aver that said James A. Hawley, unmindful of his duty in that behalf, has refused to make such computation
9 and assessment and to extend said tax as aforesaid, and still does so refuse, and has declared his intention not to compute said sums of money or to extend said taxes in said notices and demands required, and has made such refusal in writing, which is attached hereto marked "Exhibit E," and made a part of this petition.

By means whereof and the refusal of said Hawley, county clerk of said Lee County, to levy an assessment upon the property in said Town of Amboy for the purposes aforesaid, and extend the same upon the collector's books of said town, your petitioners are deprived of the benefit of their respective judgments and have no other remedy adequate, and unless aided by this court your petitioners will not be able to collect the amounts of their respective claims against said town, as above set forth, to which they are lawfully entitled.

Your petitioners therefore pray that your honor may direct that a writ of mandamus issue out of said court directed to said James A. Hawley, county clerk of said Lee County, commanding him to appear on a day to be named by said court and show cause why he should not, as such clerk, compute and assess upon the taxable property returned by the assessor of said Town of Amboy a sum sufficient to pay said judgments, and each and every of them, together with interest on the same, until they are fully paid,
10 with costs of suit in each case, together with the costs of collecting and disbursing the same, and extend such taxes upon the collector's books of said town, and do all other things necessary to enable, warrant, and justify the collector of said town, or the county treasurer of said county of Lee, in collecting such taxes for the purpose of paying said judgments, and each of them; and that upon a final hearing of this cause a rule absolute may be entered herein commanding said James A. Hawley to make such computation and assessment and extend the same, and do all other

things as above asked, under a penalty to be imposed by the court, and to report to this court at a certain fixed date in what manner he has obeyed the mandate of the court, and that said county clerk shall perform his duty in the premises; and that such other and further order may be entered herein as to the court may seem proper, or as the exigencies of the case may require.

And your petitioners will ever pray, &c.

GEORGE THOMAS,
WILLIAM B. SKINNER, AND
CAROLINE C. WETMORE,
By ROBERTS AND HUTCHINSON,
Attorneys, &c.
J. H. FAIRBANKS,
By THOMAS S. McCLELLAND,
His Attorney.

GEORGE A. SANDERS,
Of Counsel for Fairbanks.

11 United States circuit court, northern district of Illinois.

THE UNITED STATES OF AMERICA, UPON THE relation of J. H. Fairbanks, George Thomas, Wm. B. Skinner, and Caroline C. Wetmore,
vs.
JAMES A. HAWLEY.

STATE OF ILLINOIS,
Cook County, ss:

Thomas S. McClelland, being duly sworn, deposes and says that he is the attorney of record for said Fairbanks; that he has read the above and foregoing petition, and knows the contents thereof, and that so far as the same relates to said Fairbanks it is true in substance and in fact, as this affiant verily believes.

THOMAS S. McCLELLAND.

Subscribed and sworn to before me this 22d day of October, A. D. 1879.

[SEAL.] ALEXANDER E. GUILD, JR.,
Notary Public.

STATE OF ILLINOIS,
Cook County, ss:

James H. Roberts, being duly sworn, deposes and says that he is one of the attorneys of record in the case of Thomas vs. The Town of Amboy, Skinner vs. The Town of Amboy, and Wetmore vs. The Town of Amboy, referred to in the foregoing petition; that he has read said
12 petition, and knows the contents thereof, and so far as the same relates to said Thomas, Wetmore, and Skinner this affiant believes the same to be true in substance and in fact.

JAS. H. ROBERTS.

Subscribed and sworn to before me this 22d day of October, A. D. 1879.

[SEAL.]
JONAS HUTCHINSON,
Notary Public.

EXHIBIT A.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court of the United States.

J. H. FAIRBANKS *vs.* THE TOWN OF AMBOY, LEE COUNTY, ILLINOIS.	Assumpsit. Gen'l No. 15549.

To the county clerk of Lee County, Dixon, Illinois:

DEAR SIR: Take notice that on the 13th day of May, A. D. 1878, a judgment was rendered in the circuit court of the United States for the northern district of Illinois in favor of J. H. Fairbanks and against The Town of Amboy, in your said county of Lee and State of Illinois, for the sum of twenty-four hundred and forty-nine dollars, and the further sum of thirty-six dollars and twelve cents, costs of suit, which will more fully and at large appear from a certified copy of said judgment
13 hereto attached and marked Exhibit A.

You will further please take notice that on the 3d day of September, A. D. 1878, being the date fixed by law for the town board of auditors of said The Town of Amboy to meet together and audit and allow claims against said town, the said town board did meet and audit and allow said judgment for said sum of $2,449.00 and $36.12 costs of suit, as well as for the further sum of $54.88 interest, which had accurred upon said judgment from the rendition thereof up to said September 3, 1878, as will more fully and at large appear from the certificate of said board of town auditors, a copy of which is hereto attached and marked Exhibit B.

You will further take notice that said judgment was obtained upon forty-four instruments, partly printed and partly in writing, executed and delivered by said The Town of Amboy, and commonly called interest warrants or coupons, twelve of which said coupons were alike and facsimiles of each other, except as to their number, the same being numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 53, 123, and 124, and of the same tenor and effect as number one, which is as follows, to wit:

"$50.] Interest warrant, Town of Amboy. [No. 1.

"The Town of Amboy, State of Illinois, will pay to the bearer, on the first day of July, A. D. 1875, fifty dollars, at the office of the treasurer of Lee County, being one year's interest on the bond numbered
14 above.

"F. R. DUTCHER, *Supervisor*. J. T. TAIT, *Town Clerk.*"
(Across the face in red ink:) 4.

That each of said 12 coupons were for the sum of $50 each, and all matured July 1, 1875, and were cut from bonds bearing the numbers above written and executed and delivered by said Town of Amboy.

Also twenty-one of which said coupons were alike and facsimiles of each other, being for the sum of $50 each, and due on the 1st day of July, A. D. 1876, and were cut from bonds bearing even numbers with said 21 coupons executed and delivered by said Town of Amboy, and numbered as follows, to wit, Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 53, 58, 59, 60, 61, 62, 63, 64, 65, 121, 122, and 123, each of which said 21 coupons were of the same tenor and effect, and, except as to their numbers, in words and figures as follows, to wit:

"$50.] Interest warrant, Town of Amboy. [No. 1.

"The Town of Amboy, State of Illinois, will pay to the bearer, on the first day of July, A. D. 1876, fifty dollars, at the office of the treasurer of Lee County, being one year's interest on the bond numbered above.

"F. R. DUTCHER, *Supervisor*. J. T. TAIT, *Town Clerk*."

(Across the face in red ink:) 5.

Also eleven of which said coupons were alike and facsimiles of each other, being for the sum of $50 each, and due on the first day of 15 July, 1877, and were cut from bonds bearing even numbers with said 11 coupons, executed and delivered by said Town of Amboy, and numbered as follows, to wit, Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 53, and 123, each of which said eleven coupons were of the same tenor and effect, and, except as to their numbers, in words and figures as follows, to wit:

"$50.] Interest warrant, Town of Amboy. [No. 1.

"The Town of Amboy, State of Illinois, will pay to the bearer on the first day of July, A. D. 1877, fifty dollars at office of the treasurer of Lee County, being one year's interest on the bond numbered above.

"F. R. DUTCHER, *Supervisor*. J. T. TAIT, *Town Clerk*."

(Across the face in red ink.:) 6.

You will further take notice that each and every of said coupons or interest warrants were cut from and represented the annual interest of certain railroad aid bonds executed and delivered by said Town of Amboy under and by virtue of an act of the legislature of the State of Illinois, entitled "An act to incorporate the Chicago and Rock River Railroad Company," approved and in force March 24, 1869, and which by its terms was a public act, and also in accordance with the vote of the electors of said town at a regular election held July 26, 1869, and other conditions expressed on the face of such bonds, which said bonds bore numbers corresponding with the numbers of the coupons cut therefrom and as 16 above numbered, and except as to their numbers said bonds, which were and are numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 53, 58, 59, 60, 61, 62, 63, 64, 65, 121, 122, and 123, were of the same tenor and effect, and were in words and figures as follows, to wit:

"No. 2.] UNITED STATES OF AMERICA. [$500.

"COUNTY OF LEE, STATE OF ILLINOIS, TOWN OF AMBOY.

"Know all men by these presents that The Town of Amboy, in the county of Lee and State of Illinois, acknowledges itself to owe and be indebted to the Chicago and Rock River Railroad Company or bearer in the sum of five hundred dollars, lawful money of the United States, which sum the said Town of Amboy promises to pay to the Chicago and Rock River Railroad Company or the bearer hereof, on the first day of July, in the year one thousand eight hundred and eighty-one, at the office of the treasurer of the county of Lee aforesaid, in the State of Illinois, on the presentation of this bond, with interest thereon from the first day of May, A. D. 1872, at the rate of ten per centum per annum, payable annually at the office of the treasurer of the county of Lee aforesaid, on the presentation and surrender of the annexed coupons, except the last year's interest, which is payable with this bond."

(Across the face in red ink:) $500.

"This bond is issued under and by virtue of a law of the State of Illinois, entitled an act to incorporate the Chicago and Rock River
17 Railroad Company, and approved March 24th, 1869, and in accordance with the vote of the electors of said township at a regular election held July 26th, 1869, in accordance with said law and under a law of the State of Illinois, entitled "An act to fund and provide for the paying of the railroad debts of counties, townships, cities, and towns, in force April 16th, 1869, and when this bond is registered in the State auditor's office of the State of Illinois.

"The interest and principal will be paid by the State treasurer as provided by said last-mentioned law.

"In witness whereof the supervisor and town clerk of said town have hereunto set their hands and seals this 5th day of April, A. D. 1872.

"FREDERICK R. DUTCHER, *Supervisor.* [SEAL.]
"JAMES T. TAIT, *Town Clerk.* [SEAL.]"

Which said bonds and each and every of them were duly registered in the auditor's office of the State of Illinois as shown by the endorsement on the back of said bonds, and each of them, which is as follows, to wit:

"AUDITOR'S OFFICE, ILLINOIS,
"*Springfield, April 8th*, 1872.

"I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day pursuant to the provisions of an act entitled 'An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns, in force April 16, 1869.

18 "In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

[SEAL.] "C. E. LIPPINCOTT,
"*Auditor P. A.*"

You will further take notice that said judgment and costs have not been paid nor any part thereof, nor has any provision been made or taxes levied or collected to pay the same, or to pay said coupons or interest warrants on which said judgment was obtained.

You will further take notice that the terms and conditions and provisions of said act of the legislature entitled "An act to incorporate The Chicago and Rock River Railroad Company," approved and in force March 24, 1869, have been complied with and fully carried out, and said bonds and coupons of said The Town of Amboy, have been executed and delivered, and said Fairbanks is the owner of those above numbered and set forth.

You will further take notice that it is provided in said act and made obligatory that the county clerk of said county of Lee, shall annually after the execution and delivery of said bonds aforesaid to compute and assess upon all the taxable property of said town of Amboy a sum sufficient to pay the interest and costs of collection and disbursement of all said bonds so issued by said town of Amboy and extend the same upon 19 the tax books and collector's books of said town as other taxes are, and to assess also upon the property of said town an annual rate sufficient to provide a fund for the redemption of the principal and interest of said bonds as they matured and became due.

That you and your predecessors in office, although you have had certificates of the amounts of such bonds issued by said town, and the rate of interest payable thereon, and the number of each bond, and have been advised of your duty in the premises, have failed and refused to make provision for the payment of said coupons, upon which judgment has been obtained as aforesaid, and to levy an assessment upon the property in said Town of Amboy and to extend such levy upon the tax books of said town, and do other things necessary to collect taxes and pay said coupons, as provided by said act of the legislature and the laws of the State of Illinois:

Now, therefore, the above-named J. H. Fairbanks, the owner of said coupons and plaintiff in said suit, hereby demands that you, the county clerk of said county of Lee, in the State of Illinois, without delay, levy an assessment upon all the taxable property of said Town of Amboy and extend the same upon the collector's books of said Town of Amboy for the year A. D. 1879, and do all other things necessary to the assessing and collection of taxes upon the taxable property of said town for the 20 year 1879, sufficient to pay said judgment and costs, together with interest thereon, from the rendition of the same until said judgment and costs be fully paid, and that you in no wise neglect your duty in this behalf.

J. H. FAIRBANKS,
By THOMAS S. McCLELLAND,
His Attorney and Agent.

EXHIBIT A.

United States circuit court, northern district of Illinois.

MONDAY, *May* 13, A. D. 1878.

Present Hon. Henry W. Blodgett, district judge.

J. H. FAIRBANKS
v.
THE TOWN OF AMBOY, LEE COUNTY, ILLINOIS. } Assumpsit.

Now comes the plaintiff, by his attorney, and it appearing to the court

that the defendant had been duly served with process and had failed to plead, and it being now ruled to plead instanter, and it failing to plead or answer the rule, and the defendant being now three times solemnly called comes not, but makes default, it is thereupon considered by the court that its default be entered, and that the plaintiff have and recover of the defendant his damages; and after hearing the evidence on the part
21 of the plaintiff the court finds that there is due to the plaintiff on the forty-four coupons upon which this suit is founded the sum of twenty-four hundred and forty-nine dollars.

It is thereupon considered and adjudged by the court that the plaintiff do have and recover of the defendant the said sum of twenty-four hundred and forty-nine dollars, his damages so as aforesaid found, together with his costs and charges in this behalf expended, amounting to the sum of thirty-six dollars and twelve cents.

EXHIBIT B.

STATE OF ILLINOIS,
Lee County, Town of Amboy, ss:

We, the board of town auditors of said Town of Amboy, having duly met at the office of Israel R. Patterson, J. P., in said town (the town clerk not being present), on the 3rd day of September, A. D. 1878, for the purpose of examining and auditing town accounts, there being present at said meeting the supervisor and justice of the peace, and, having examined all accounts presented, do hereby certify that the following is the nature of the claims or demands against said town presented and allowed at said meeting, showing to whom the several amounts are allowed, to wit:

	To J. H. Fairbanks, for amount of judgment obtained in the circuit court of the United States, northern district of Illinois, May 13, 1878	$2,449 00
22	Taxable costs in same	36 12
	Interest on same to Sept. 3d, 1878	54 88
		2,540 00

That we have this day audited and allowed to the above-named person the same as above stated, which account so audited is filed in the town clerk's office.

Witness our hands this 3rd day of Sept., 1878.

ISAAC EDWARDS, *Sup.*
WILLIAM B. ANDRUS, *J. P.*
J. R. PATTERSON, *J. P.*
THOS. HINERS, *J. P.*

NOTE.—The above sum of $2,540.00 bears interest at 6 per cent. per annum from said Sept. 3, 1878, until paid, and in the assessment of taxes to pay the same provision will be duly made for such interest as a part of said judgment.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court of the United States.

J. H. FAIRBANKS *vs.* THE TOWN OF AMBOY. } Assumpsit. No. 15549.

STATE OF ILLINOIS,
Cook County, ss:

23 Thomas S. McClelland, being duly sworn, deposes and says that he is the attorney and agent for the above-named plaintiff; that he has read the foregoing notice and exhibits attached thereto, and that the same are true in substance and in fact; that the sole and only cause of action in said suit was upon the coupons or interest warrants set out in said notice, and that said judgment was obtained upon said coupons as set forth in said notice.

THOMAS S. McCLELLAND.

Subscribed and sworn to before me this 2d day of September, A. D. 1879.

[SEAL.] FRANK A. JOHNSON,
Notary Public.

STATE OF ILLINOIS,
Cook County, ss:

Thomas S. McClelland, being duly sworn, deposes and says that, on the 5th day of September, A. D. 1879, he served the above and foregoing notice, exhibits, and affidavit, by delivering the original of which the foregoing are true copies to James A. Hawley, esq., clerk of the county court of Lee County, Illinois, and explaining to him the nature of the same.

THOMAS S. McCLELLAND.

Subscribed and sworn to before me this 6th day of September, A. D. 1879.

[SEAL.] FRANK A. JOHNSON,
Notary Public.

24 EXHIBIT B.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To the clerk of the county of Lee and State of Illinois:

SIR: You are hereby notified that, on the 24th day of January, 1878, the undersigned, William B. Skinner, by the consideration and judgment of the circuit court of the United States for the northern district of Illinois, recovered a judgment against The Town of Amboy, in Lee County aforesaid, for the sum of two thousand and eighteen dollars and fifty-two cents, damages, and forty-seven dollars and ten cents, costs of suit, in a certain action of assumpsit, being for the interest on certain bonds issued to the Chicago and Rock River Railroad Company, and afterwards sold and delivered to the undersigned, the plaintiff in said action, the said in-

terest being evidenced by two coupons of eight and thirty-three hundredths dollars each ($8.33), and thirty-five coupons of fifty dollars each, attached to certain of said bonds, and said action being upon said coupons as the sole and only cause of action therein, which said judgment, with the interest thereon from the rendition thereof, was afterwards duly audited and allowed by the board of town auditors of the said Town of Amboy. The following is a copy of one of said bonds, with the auditor's certifi-
25 cate of registry on the back thereof, all being of the same tenor,
except as to the numbers and amounts thereof, respectively, viz:

No. 122.] UNITED STATES OF AMERICA. [500.

COUNTY OF LEE, STATE OF ILLINOIS, TOWN OF AMBOY.

Know all men by these presents that the Township of Amboy, in the county of Lee and State of Illinois, acknowledges itself to owe and be indebted to the Chicago and Rock River Railroad Company, or bearer, in the sum of five hundred dollars, lawful money of the United States, which sum the said Town of Amboy promises to pay to the Chicago and Rock River Railroad Company, or the bearer hereof, on the first day of July, in the year one thousand eight hundred and eighty-one, at the office of the treasurer of the county of Lee aforesaid, in the State of Illinois, on the presentation of this bond, with interest thereon from the first day of May, A. D. 1872, at the rate of ten per centum per annum, payable annually at the office of the treasurer of the county of Lee aforesaid, on the presentation and surrender of the annexed coupons, except the last year's interest, which is payable with this bond.

This bond is issued under and by virtue of a law of the State of Illinois, entitled "An act to incorporate the Chicago and Rock River
26 Railroad Company," approved March 24th, 1869, and in accord-
ance with the vote of the electors of said Township of Amboy, at a regular election, held July 26th, 1869, in accordance with said law and under a law of the State of Illinois, entitled "An act to fund and provide for the paying of the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869, and when this bond is registered in the State auditor's office of the State of Illinois the interest and principal will be paid by the State treasurer, as provided by said last-mentioned law.

In witness whereof the supervisor and town clerk of said town have hereunto set their hands and seals this fifth day of April, A. D. 1872.

FREDERICK R. DUTCHER, [SEAL.]
Supervisor.
JAMES T. TAIT, *Town Clerk.* [SEAL.]

The following is on the back of said bond:

AUDITOR'S OFFICE, ILLINOIS,
Springfield, April 8th, 1872.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16, 1869.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

27 [SEAL.] C. E. LIPPINCOTT,
Auditor P. A.

That the said bonds and interest coupons were so executed and delivered by said Town of Amboy, in pursuance of an act of the general assembly of said State referred to in said bonds, entitled "An act to incorporate the Chicago and Rock River Railroad Company," approved March the 24th, 1869, and pursuant to a vote of the electors of said Town of Amboy, at a regular election held therein July 26th, 1869, referred to in said bonds. A duly certified copy of the record of said judgment, with the copy of the account sued on, is hereto annexed and made a part hereof, marked Exhibit A; that said judgment is wholly unsatisfied, and no provision has been made by said Town of Amboy, or any person, for the payment thereof, or any part thereof, or for levying or collecting a tax for that purpose. You are therefore notified and required, as clerk as aforesaid, without delay, pursuant to the provisions of said act, to compute and assess upon all the taxable property returned by the assessor to said Town of Amboy a sum sufficient to pay the said judgment and interest thereon, and extend the same upon the collector's books of said Town of Amboy for the year A. D. 1879, and do all other things provided by law necessary to the collecting of taxes upon the taxable property of said Town of Amboy for the 28 year 1879 sufficient to pay said judgments, together with the interest thereon, from the rendition of the same until said judgment be fully paid and satisfied.

WILLIAM B. SKINNER,
By JAMES H. ROBERTS,
His Attorney and Agent.

STATE OF ILLINOIS,
Cook County, ss:

James H. Roberts, being duly sworn according to law, says that he is the duly authorized agent and attorney in this behalf of William B. Skinner mentioned in the above and foregoing notice, who recovered judgment against the Town of Amboy, Lee County, Illinois, as therein mentioned.

That the said judgment remains in full force and effect, and is in no part satisfied; that the facts set forth in said notice are true, as he verily believes.

JAMES H. ROBERTS.

Subscribed and sworn to before me, the undersigned, a notary public of said county, this 30th day of August, 1879. Witness my hand and notarial seal the day and year aforesaid.

[SEAL.] JONAS HUTCHINSON,
Notary Public.

29 UNITED STATES OF AMERICA,
Northern District of Illinois:

In circuit court. July term, A. D. 1877.

William B. Skinner, who is a citizen of the State of New York, plaintiff, by Roberts and Hutchinson, his attorneys, complains of The Town of Amboy, a body corporate organized under and existing under the laws of the State of Illinois, and located in said northern district the defendant, of a plea of trespass on the case on promises: For that whereas, heretofore, to wit, on April fifth, A. D. 1872, at, to wit, said northern district, said defendant made, executed, and delivered to The Chicago and Rock River Railroad Company its forty-nine certain interest coupons, in writing, two thereof for eight $\frac{33}{100}$ dollars each, due July 1st, A. D. 1873; two for fifty dollars each, due July 1st, A. D. 1873; eight for fifty dollars each, due July 1st, A. D. 1874; twelve for fifty dollars each, due July 1st, A. D. 1875, twenty-one for fifty dollars each, due July 1st, A. D. 1876; and the remaining four for fifty dollars each, due July 1st, '77.

And plaintiff avers that all of said coupons are payable to bearer, and are facsimiles of each other and of the copy filed with this declaration, except as to numbers on their face referring to the bonds to which they respectively belonged, their dates of maturity, and two thereof be-
30 ing for only 8.33 each, as aforesaid. And plaintiff further avers
that after the delivery of said coupons by defendant as aforesaid, at, to wit, said district, on, to wit, the date first aforesaid, plaintiff became the owner and bearer thereof, by purchase for value before the maturity thereof, and is still the owner and bearer thereof, whereby defendant then and there, to wit, at, &c., aforesaid, on, &c., first aforesaid, became and now is liable to plaintiff for said sums of money in said coupons mentioned. And defendant being so liable to plaintiff as bearer thereof as aforesaid, then and there promised plaintiff well and truly to pay said coupons when due, according to their tenor and effect; yet although the said coupons have long since become due, and the said defendant hath been requested to pay the same to plaintiff, he hath refused so to do, to wit, at, &c., aforesaid.

* * * * * * *

By ROBERTS AND HUTCHINSON, *his Att'ys.*

Copy of one of the instruments sued on.

$8.33.] Interest warrant, Town of Amboy. [No. 67.

The Town of Amboy, State of Illinois, will pay to the bearer, on the first day of July, 1873, eight and $\frac{33}{100}$ dollars, at the office of the treasurer of Lee County, being one year's interest on the bond numbered above.

F. R. DUTCHER, *Supervisor.* J. T. TAIT, *Town Clerk.*

(Across the face in red ink:) 1.

31 *Copy of a fifty dollar coupon.*

$50.] Interest warrant, Town of Amboy. [No. 66.

The Town of Amboy, State of Illinois, will pay to the bearer on the first day of July, A. D. 1875, fifty dollars, at the office of the treasurer of Lee County, being one year's interest on the bond numbered above.

F. R. DUTCHER, *Supervisor.* J. T. TAIT, *Town Clerk.*

(Across the face in red ink:) 4.

(Endorsed:) Filed June 1, 1877. Wm. H. Bradley, cl'k.

United States circuit court, northern district of Illinois.

THURSDAY, *January* 24, A. D. 1878.

Present Hon. Henry W. Blodgett, district judge.

WILLIAM B. SKINNER
v. } Assumpsit.
THE TOWN OF AMBOY.

This cause having this day been called for trial, now comes the plaintiff by his attorney, and upon issue joined upon the plea of the defendant herein on motion of the plaintiff's attorney, thereupon come a jury of good and lawful men, to wit: John Stanley, A. H. Heald, Albert Evans, J. E.
Bostler, D. S. Putnam, H. W. Thornton, Lawrence Kennedy,
32 William Soper, W. R. Guild, Edward Sterling, D. J. Pinkney, and
John H. Bowers, who were all duly elected, tried, and sworn well and truly to try said issue, and after hearing the evidence on the part of the plaintiff, and receiving the instructions of the court the jury returned the following verdict, to wit: we the jury, find the issue for the plaintiff and assess his damages to the sum of two thousand and eighteen dollars and fifty-two cents. It is thereupon considered and adjudged by the court that the plaintiff do have and recover of the defendant the said sum of two thousand and eighteen dollars and fifty-two cents, his damages so as aforesaid assessed, together with his costs and charges in this behalf expended amounting to the sum of forty-seven dollars and ten cents.

NORTHERN DISTRICT OF ILLINOIS, *sct:*

I, William H. Bradley, clerk of the circuit court of the United States, do hereby certify the above and foregoing to be a complete and correct copy of the first count of the declaration filed June 1, 1877, and of the copy of the instrument sued on as set out in said declaration, and of the judgment entered of record January 24, A. D. 1878, in the cause wherein William B. Skinner was the plaintiff and Town of Amboy was the defendant, as appears from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal
of said court at my office in Chicago, in said district, this 27th day
33 of August, A. D. 1879, and of our Independence, the 104th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

STATE OF ILLINOIS,
Cook County, ss:

Thomas S. McClelland, being duly sworn, says that on the 5th day of Sept., 1879, he delivered the original notice and certified record, with the affidavit of James H. Roberts attached thereto, of which the above and foregoing is a copy, to James A. Hawley, esq., county clerk of Lee County, Illinois.

THOMAS S. McCLELLAND.

Subscribed and sworn to before me, the undersigned, a notary public of said county of Cook, this 6th day of Sept., 1879.

Witness my hand and notarial seal the day and year aforesaid.

[SEAL.] FRANK A. JOHNSON,
Notary Public.

EXHIBIT C.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To the county clerk of the county of Lee and State of Illinois:

SIR: You are hereby notified that on the 29th day of November, 1875,
the undersigned, George Thomas, by the consideration and judgment of the
circuit court of the United States for the northern district of Illi-
34 nois, recovered a judgment against The Town of Amboy, in Lee
County aforesaid, for the sum of eight hundred and sixty-six dol-
lars, damages, and forty-three dollars and ninety cents, costs of suit, in a
certain action of assumpsit, being for the interest on certain bonds issued
by the said Town of Amboy and delivered to the Chicago and Rock River
Railroad Company, and afterwards sold and delivered to the undersigned,
the plaintiff in said action; the said interest being evidenced by sixteen
coupons of fifty dollars each attached to certain of said bonds, and said
action being upon said coupons as the sole and only cause of action
therein, which said judgment, with the interest thereon from the rendi-
tion thereof, was afterwards duly audited and allowed by the board of
town auditors of the said Town of Amboy. The following is a copy of
one of said bonds, with the auditor's certificate of registry on the back
thereof, all being of the same tenor except as to the numbers and amounts
thereof respectively, viz:

No. 122.] UNITED STATES OF AMERICA. [$500.

COUNTY OF LEE, STATE OF ILLINOIS, TOWN OF AMBOY.

(On face in red ink:) $500.

Know all men by these presents that the Township of Amboy, in the
County of Lee and State of Illinois, acknowledges itself to owe and be
indebted to the Chicago and Rock River Railroad Company, or
35 bearer, in the sum of five hundred dollars, lawful money of the
United States, which sum the said Town of Amboy promises to pay
to the Chicago and Rock River Railroad Company, or the bearer hereof,
on the first day of July, in the year one thousand eight hundred and
eighty-one, at the office of the treasurer of the county of Lee aforesaid, in
the State of Illinois, on the presentation of this bond, with interest thereon
from the first day of May, A. D. 1872, at the rate of ten per centum per
annum, payable annually at the office of the treasurer of the county of
Lee aforesaid, on the presentation and surrender of the annexed cou-
pons, except the last year's interest, which is payable with this bond.

This bond is issued under and by virtue of a law of the State of Illinois, entitled "An act to incorporate the Chicago and Rock River Railroad Company," approved March 24th, 1869, and in accordance with the vote of the electors of said Township of Amboy, at a regular election held July 26th, 1869, in accordance with said law and under a law of the State of Illinois, entitled "An act to fund and provide for the paying of the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869, and when this bond is registered in the State auditor's office of the State of

Illinois the interest and principal will be paid by the State treasurer as provided by said last-mentioned law.

36 In witness whereof the supervisor and town clerk of said town have hereunto set their hands and seals this fifth day of April, A. D. 1872.

FREDERICK R. DUTCHER, *Supervisor*. [SEAL.]
JAMES T. TAIT, *Town Clerk*. [SEAL.]

(The following is on the back of said bond:)

AUDITOR'S OFFICE, ILLINOIS,
Springfield, April 8th, 1872.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16, 1869.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

[SEAL.] C. E. LIPPINCOTT,
Auditor P. A.

That the said bonds and interest coupons were so executed and delivered by said Town of Amboy in pursuance of an act of the general assembly of said State referred to in said bonds, entitled "An act to incorporate the Chicago and Rock River Railroad Company," approved March the 24th, 1869, and pursuant to a vote of the electors of said Town of Amboy, at a regular election held therein July 26th, 1869, referred to in said bonds. 37 A duly certified copy of the record of said judgment, with the copy of the account sued on, is hereto annexed and made a part hereof, marked Exhibit "A;" that said judgment is wholly unsatisfied, and no provision has been made by said Town of Amboy, or any person, for the payment thereof, or any part thereof, or for levying or collecting a tax for that purpose. You are therefore notified and required, as clerk as aforesaid, without delay, pursuant to the provisions of said act, to compute and assess upon all the taxable property returned by the assessor of said Town of Amboy a sum sufficient to pay the said judgment and interest thereon, and extend the same upon the collector's books of said Town of Amboy for the year A. D. 1879, and do all other things provided by law necessary to the collecting of taxes upon the taxable property of said Town of Amboy for the year 1879 sufficient to pay said judgment, together with the interest thereon from the rendition of the same until said judgment be fully paid and satisfied.

GEORGE THOMAS,
By JAMES H. ROBERTS,
His Attorney and Agent.

STATE OF ILLINOIS,
Cook County, ss:

James H. Roberts, being duly sworn according to law, says that he is the duly authorized agent and attorney in this behalf of George

38 Thomas, mentioned in the above and foregoing notice, who recovered judgment against the Town of Amboy, Lee County, Illinois, as therein mentioned. That the said judgment remains in full force and effect, and is in no part paid or satisfied. That the facts set forth in said notice are true, as he verily believes.

JAMES H. ROBERTS.

Subscribed and sworn to before me, the undersigned, a notary public of said county, this 30th day of August, A. D. 1879. Witness my hand and notarial seal the day and year aforesaid.

[SEAL.] JONAS HUTCHINSON,
Notary Public.

UNITED STATES OF AMERICA,
Northern District of Illinois:

In circuit court, May term, A. D. 1875.

George Thomas, a citizen of the State of New York, plaintiff, by Gookins and Roberts, his attorneys, complains of the Town of Amboy, a body corporate existing under the laws of the State of Illinois, and situate therein, to wit, in the said northern district, defendant, of a plea of trespass on the case on promises: For that whereas the defendant heretofore, on, to wit, the first day of July, A. D. eighteen hundred and seventy-three, at, to wit, said northern district, made its sixteen certain interest coupons
39 in writing, one in the words and figures following, to wit:

$50.] Interest warrant Town of Amboy. [No. 58.

The Town of Amboy, State of Illinois, will pay to the bearer, on the first day of July, A. D. 1874, fifty dollars, at the office of the treasurer of Lee County, being one year's interest on the bond numbered above.
F. R. DUTCHER, *Supervisor.* J. T. TAIT, *Town Clerk.*

And said plaintiff alleges that the other fifteen of said coupons are facsimiles of the one above copied, with the exception that the numbers thereon designating the bond to which they were attached is different from the number upon the one copied above, and that the numbers upon the remaining fifteen aforesaid are respectively as follows, to wit: 59, 60, 61, 62, 63, 64, 65, 121, 122, 123, 124, 127, 128, 129, and 130.

And said plaintiff avers that said coupons, on the day and year in this count first above mentioned, to wit, the first day of July, A. D. eighteen hundred and seventy-three, at, to wit, said northern district, were duly delivered by said defendant, and that they afterwards, to wit, on the same day and year, to wit, at said district, came to the possession of plaintiff as owner and bearer thereof, and that he is still in possession thereof as such owner and bearer By reason whereof the said defendant became liable to pay to plaintiff the said sums of money in said coupons men-
40 tioned according to the tenor and effect thereof, and being so liable the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place first above written, undertook and faithfully promised the said plaintiff well and truly to pay to the said

plaintiff the said sums of money in said coupons mentioned according to their tenor and effect, yet the said defendant hath not paid said coupons, or any or either of them, or any part thereof, although often requested so to do.

Copy of instrument sued upon.

16 coupons numbered respectively, 58, 59, 60, 61, 62, 63, 64, 65, 121, 122, 123, 124, 127, 128, 129, and 130, all facsimilies of each other, except as to numbers, the following being a copy of No. 58:

$50.] Interest warrant, Town of Amboy. [No. 58.

The Town of Amboy, State of Illinois, will pay to the bearer, on the first day of July, A. D. 1874, fifty dollars, at the office of the treasurer of Lee County, being one year's interest on the bond numbered above.

F. R. DUTCHER, *Supervisor*. J. T. TAIT, *Town Clerk*.

(Endorsed:) Filed April 24, 1875. Wm. H. Bradley, cl'k.

United States circuit court, northern district of Illinois.

41 MONDAY, *November* 29, A. D. 1875.

Present, Hon. Henry W. Blodgett, district judge.

GEORGE THOMAS
vs.
THE TOWN OF AMBOY.
} Assumpsit.

This cause having this day been called for trial, now comes the plaintiff by his attorney, and moves the court that a jury come to try the issue joined upon the plea of the defendant herein; it is thereupon considered by the court that a jury come to try said issue, and thereupon come a jury of good and lawful men, to wit, Charles Newcomer, Moses L. Earl, S. E. Bradley, George N. Jones, William Osborn, E. Reynolds, B. F. Lee, William Farnham, W. F. More, C. G. Miller, L. M. Osterhaudt, and W. K. Stahl, who were all duly elected, tried, and sworn, well and truly to try said issue, and after hearing the evidence and receiving the instructions of the court, the jury returned the following verdict, to wit: We, the jury, find the issue for the plaintiff, and assess his damages to the sum of eight hundred and sixty-six dollars. It is thereupon considered and adjudged by the court that the plaintiff do have and recover of the defendant the said sum of eight hundred and sixty-six dollars, his damages so as aforesaid assessed, together with his costs and charges in this behalf expended, amounting to the sum of forty-three dollars and ninety cents.

NORTHERN DISTRICT OF ILLINOIS, *sct:*

I, William H. Bradley, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be a
42 true and complete copy of the first count of the declaration filed April 24, 1875, and of the copy of instrument sued on in said declaration, and of the judgment entered of record November 29, A. D.

1875, in the cause wherein George Thomas was the plaintiff and Town of Amboy was the defendant, as appears from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this 27th day of August, A. D. 1879, and of our Independence the 104th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

STATE OF ILLINOIS,
Cook County, ss:

Thomas S. McClelland, being duly sworn, says that on the 5th day of Sept. he delivered the original notice and certified record, with the affidavit of James H. Roberts attached thereto, of which the above and foregoing is a copy, to James A. Hawley, esq., county clerk of Lee County, Illinois.

THOMAS S. McCLELLAND.

Subscribed and sworn to before me, the undersigned, a notary public of said county of Cook, this 6th day of September, 1879.

43 Witness my hand and notarial seal the day and year aforesaid.

[SEAL.] FRANK A. JOHNSON,
Notary Public.

EXHIBIT D.

UNITED STATES OF AMERICA,
Northern District of Illinois:

To the county clerk of the county of Lee and State of Illinois:

SIR: You are hereby notified that on the 17th day of December, 1875, the undersigned, Caroline C. Wetmore, by the consideration and judgment of the circuit court of the United States for the northern district of Illinois, recovered a judgment against The Town of Amboy, in Lee County aforesaid, for the sum of three thousand eight hundred thirty-six dollars and fourteen cents ($3,836.14), damages, and fifty dollars and forty cents ($50.40), costs of suit, in a certain action of assumpsit, being for the interest on certain bonds issued by the said Town of Amboy and delivered to the Chicago and Rock River Railroad Company, and afterwards sold and delivered to the undersigned, the plaintiff in said action, the said interest being evidenced by twenty coupons of eight dollars and thirty-three cents each, and by forty coupons of fifty dollars each, attached to certain of said bonds, and said action being upon said coupons as 44 the sole and only cause of action therein, which said judgment, with the interest thereon from the rendition thereof, was afterwards duly audited and allowed by the board of town auditors of the said Town of Amboy.

The following is a copy of one of said bonds, with the auditor's certificate of registry on the back thereof, all being of the same tenor except as to the number and amounts thereof respectively, viz:

No. 122.] UNITED STATES OF AMERICA. [$500.

COUNTY OF LEE, STATE OF ILLINOIS, TOWN OF AMBOY.

Know all men by these presents that the Township of Amboy, in the county of Lee and State of Illinois, acknowledges itself to owe and be indebted to the Chicago and Rock River Railroad Company, or bearer, in the sum of five hundred dollars, lawful money of the United States, which sum the said Town of Amboy promises to pay to the Chicago and Rock River Railroad Company, or the bearer hereof, on the first day of July, in the year one thousand eight hundred and eighty-one, at the office of the treasurer of the county of Lee aforesaid, in the State of Illinois, on the presentation of this bond and interest thereon from the first day of May, A. D. 1872, at the rate of ten per centum per annum, payable annually at
the office of the treasurer of the county of Lee aforesaid, on the
45 presentation and surrender of the annexed coupons, except the last
year's interest which is payable with this bond.

This bond is issued under and by virtue of a law of the State of Illinois, entitled "An act to incorporate the Chicago and Rock River Railroad Company," approved March 24th, 1869, and in accordance with the vote of the electors of said Township of Amboy, at a regular election held July 26th, 1869, in accordance with said law, and under a law of the State of Illinois, entitled "An act to fund and provide for the paying of the railroad debts of counties, townships, cities, and towns in force April 16th, 1869, and when this bond is registered in the State auditor's office of the State of Illinois the interest and principal will be paid by the State treasurer as provided by said last-mentioned law.

In witness whereof the supervisor and town clerk of said town have hereunto set their hands and seals this fifth day of April, A. D. 1872.

FREDERICK R. DUTCHER, *Supervisor*. [SEAL.]
JAMES T. TAIT, *Town Clerk*. [SEAL.]

On the back of said bond is the following:

AUDITOR'S OFFICE, ILLINOIS,
Springfield, April 8th, 1872.

I, Charles E. Lippincott, auditor of public accounts of the State of
Illinois, do hereby certify that the within bond has been registered
46 in this office this day, pursuant to the provisions of an act entitled
"An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns in force April 16, 1869."

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

[SEAL.] C. E. LIPPINCOTT,
Auditor P. A.

And you are hereby further notified that afterwards, and on the 20th day of June, 1876, the undersigned, Caroline C. Wetmore, by the consideration and judgment of the said court, recovered a certain other judgment against the said Town of Amboy for the sum of one thousand and fifty-eight dollars and thirty-three cents damages ($1,058.33) and thirty-one dollars and fifty cents costs ($31.50) of suit in a certain other action of

assumpsit, being for the interest on certain bonds issued by the said Town of Amboy and delivered to the said Chicago and Rock River Railroad Company, and afterwards sold and delivered to the undersigned, the plaintiff in said action, the said interest being evidenced by twenty (20) other coupons of ($50) fifty dollars each, attached to certain of said bonds, and said action being upon said last-mentioned coupons as the sole and only cause of action therein, which said judgment, with the interest
47 thereon from the rendition thereof, was afterwards duly audited and allowed by the board of town auditors of the said Town of Amboy. A copy of one of said bonds, with the auditor's certificate of registry on the back thereof, is hereinbefore set forth, all of said bonds being of the same tenor except as to the numbers thereof respectively; that all of the said bonds and interest coupons hereinbefore mentioned were so executed and delivered by said Town of Amboy in pursuance of an act of the general assembly of said State referred to in said bonds, entitled "An act to incorporate the Chicago and Rock River Railroad Company," approved March 24th, 1869, and pursuant to a vote of the electors of said Town of Amboy, at a regular election held therein July 26th, 1869, referred to in said bonds. Duly certified copies of the record of said judgment respectively, with the copy of the account sued on in said actions respectively, are hereto annexed and made a part of this notice, marked, respectively, Exhibits A and B.

You are further notified that both of said judgments are wholly unpaid and unsatisfied, and no provision has been made by said Town of Amboy, or any person, for the payment thereof or any part thereof, or for levying or collecting a tax for that purpose.

You are therefore notified and required, as clerk as aforesaid, without delay, pursuant to the provisions of said act, to compute and assess
48 upon all the taxable property returned by the assessor of said Town of Amboy a sum sufficient to pay the said several judgments and interest thereon, and extend the same upon the collector's books of said Town of Amboy for the year 1879, and do all other things provided by law necessary to the collecting of taxes upon the taxable property of the said Town of Amboy for the year 1879 sufficient to pay the said several judgments, together with the interest thereon from the rendition of the same until said several judgments be fully paid and satisfied.

CAROLINE C. WETMORE,
By JAMES H. ROBERTS,
Her Attorney and Agent.

STATE OF ILLINOIS,
Cook County, ss:

James H. Roberts, being duly sworn according to law, says that he is the duly authorised agent and attorney in this behalf of Caroline C. Wetmore, mentioned in the above and foregoing notice, who recovered judgment against The Town of Amboy, Lee County, Illinois, as therein mentioned; that the said judgment remains in full force and effect, and is in no part paid or satisfied; that the facts set forth in said notice are true, as he verily believes.

JAMES H. ROBERTS.

Subscribed and sworn to before me, the undersigned, a notary public

of said county, this 30th day of August, 1879. Witness my
49 hand and notarial seal the day and year aforesaid.

[SEAL.] JONAS HUTCHINSON,
Notary Public.

EXHIBIT A.

UNITED STATES OF AMERICA,
Northern District of Illinois:

In circuit court, July term, A. D. 1875.

Caroline C. Wetmore, a resident and citizen of the State of New York, plaintiff in this suit, by her att'ys, Cullom, Scholes and Mather, and J. H. Roberts complain of The Town of Amboy, a corporation existing under the laws of the State of Illinois, and situate in the northern district thereof, of a plea of trespass on the case on promises, for that whereas heretofore, to wit, on the fifth day of April, A. D. 1872, at, to wit, said northern district, defendant made its sixty certain interest coupons in writing, and plaintiff avers that twenty of said sixty coupons are fac similes of each other, except as to the number thereon, they being respectively as follows: 18, 19, 20, 21, 24, 27, 28, 29, 76, 77, 78, 171, 172, 187, 188, 189, 192, 193, 194, 195, the following being a true copy of said number 18:

$8.33.] Interest warrant, Town of Amboy. [No. 18.

50 The Town of Amboy, State of Illinois, will pay to the bearer, on the first day of July, 1873, eight and $\frac{33}{100}$ dollars, at the office of the treasurer of Lee County, being one year's interest on the bond numbered above.

F. R. DUTCHER, *Supervisor.* J. T. TAIT, *Town Clerk.*

(Across the face in red ink:) 1.

And plaintiff further avers that twenty other of said sixty coupons are fac similes of each other except as to numbers thereon, they being respectively as follows, to wit:
25, 26, 34, 36, 37, 38, 41, 40, 42, 43, 44, 45, 46, 47, 48, 49, 50, 5, 35, and 39, the following being a true copy of said number 35:

$50.] Interest warrant, Town of Amboy. [No. 25.

The Town of Amboy, State of Illinois, will pay to the bearer, on the first day of July, A. D. 1873, fifty dollars, at the office of the treasurer of Lee County, being one year's interest on the bond numbered above.

F. R. DUTCHER, *Supervisor.* J. T. TAIT, *Town Clerk.*

(Across the face in red ink:) 2.

And the plaintiff further avers that the remaining twenty of said sixty coupons are fac similes of each other except as to the numbers thereon, they being respectively as follows, to wit: 50, 49, 48, 47, 46, 45, 44, 43, 42, 41, 40, 39, 38, 37, 36, 35, 34, 33, 32, 31, the following being a true copy of said number 50.

51 $50.] Interest warrant, Town of Amboy. [No. 50.

The Town of Amboy, State of Illinois, will pay to the bearer, on the first day of July, A. D. 1874, fifty dollars, at the office of the treasurer of Lee County, being one year's interest on the bond numbered above.
F. R. DUTCHER, *Supervisor*. J. T. TAIT, *Town Clerk*.

(Across the face in red ink:) 3.

And plaintiff avers that at, to wit, said northern district, on, to wit, the fifth day of April, A. D. 1872, said coupons were then and there duly delivered, and then and there came to the possession of plaintiff as owner and bearer thereof, whereby defendant became then and there liable to pay plaintiff as such owner and bearer thereof the sums respectively in said coupons mentioned according to the tenor and effect thereof, and being so liable and in consideration of the premises then and there faithfully promised and undertook to pay plaintiff said sums of monies in said coupons respectively mentioned according to their tenor and effect.

* * * * * * *

(Endorsed:) Filed June 19, 1875. Wm. H. Bradley, clerk.

In the circuit court of the United States, northern district of Illinois.

CAROLINE C. WETMORE
v. } Assumpsit.
THE TOWN OF AMBOY.

52 And now comes the plaintiff, by Cullum, Scholes, and Mather and Jas. H. Roberts, her att'ys, and, pursuant to stipulation of counsel filed herein, make the following amendments to the declaration, to wit:

At the end of the third line of the third page insert the following:

And whereas also heretofore, to wit, on the fifth day of April, 1872, to wit, at said district, the defendant made and delivered to The Chicago and Rock River Railroad Company its four other coupons for the sum of eight and $\frac{33}{100}$ dollars each, due July 1st, 1873, of the same tenor in other respects as the coupons first aforesaid except as to the numbers thereof, being numbered, respectively, 136, 137, 138, 139, and also made and delivered as aforesaid its twenty-six other coupons for the sum of fifty dollars each, four thereof numbered, respectively, 136, 137, 138, and 139, and due July first, 1873, four thereof numbered, respectively, 136, 137, 138, 139, and due July first, 1874, and eighteen thereof, numbered, respectively, 58, 59, 60, 61, 62, 63, 64, 65, 121, 122, 127, 128, 129, 130, 136, 137, 138, 139, and due July first, 1875, and all of said twenty-six coupons being in other respects of the same tenor as the coupons first aforesaid, all of which said thirty coupons were, before the maturity thereof, respectively sold, assigned, and transferred to the plaintiff, who purchased the same in good faith, for value paid therefor, in open market.

53 By means whereof the defendant became liable to pay the same to the plaintiff when they became respectively due, according to their respective terms and effect; but, although requested so to do, defend-

ant has not paid the same, or any part thereof, to plaintiff, to her damage as aforesaid.

CULLOM, SCHOLES AND MATHER, AND
J. H. ROBERTS.

(Endorsed:) Filed Dec. 17, 1875. Wm. H. Bradley, cl'k.

United States circuit court, northern district of Illinois.

FRIDAY, *December* 17, A. D. 1875.

Present, Hon. Henry W. Blodgett, district judge.

CAROLINE C. WETMORE
v.
TOWN OF AMBOY.
} Assumpsit.

Now comes the plaintiff, by her attorney, and on her motion leave is given her to amend her declaration herein; and this cause being now called for trial, the plaintiff, by her attorney, moves the court that a jury come to try the issue joined upon the plea of the defendant filed herein.

It is thereupon considered by the court that a jury come to try said issue, and thereupon come a jury of good and lawful men, to wit, L. M.
Osterhaudt, S. E. Bradley, C. O. B. Brockway, George N. Jones,
54 A. Hall, Elisha Gridley, J. E. McGuire, B. T. Lee, T. W. Ed-
wards, John Batteus, William L. Church, jr., and William Osborn, who were all duly elected, tried, and sworn well and truly to try said issue, and after hearing the evidence on the part of the plaintiff, and receiving the instructions of the court, the jury returned the following verdict, to wit: We, the jury, find the issue for the plaintiff, and assess her damages to the sum of three thousand eight hundred and thirty-six dollars and fourteen cents.

It is thereupon considered and adjudged by the court that the plaintiff do have and recover of the defendant the said sum of three thousand eight hundred and thirty-six dollars and fourteen cents, her damages so as aforesaid assessed, together with her costs and charges in this behalf expended, amounting to the sum of fifty dollars and forty cents.

NORTHERN DISTRICT OF ILLINOIS, *set:*

I, William H. Bradley, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be true and complete copies of the first count of the declaration filed June 19, 1875, of the amendment to the declaration filed December 17, 1875, and of the judgment
entered of record December 17, 1875, in the cause wherein Caroline
55 C. Wetmore was the plaintiff and Town of Amboy was the defendant,
as appears from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this 27th day of August, A. D. 1879, and of our Independence the 104th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

EXHIBIT B.

UNITED STATES OF AMERICA,
Northern District of Illinois:

In the circuit court, May term, A. D. 1876.

Caroline C. Wetmore, who is a citizen of the State of New York, and a resident therein, by J. H. Roberts, her attorney, plaintiff, complains of the Town of Amboy, a corporation organized under the laws of the State of Illinois, and situate in said northern district, the defendant, of a plea of trespass on the case on promises: For that whereas said defendant heretofore, to wit, April fifth, A. D. eighteen hundred and seventy-two, at, to wit, said northern district, made its twenty certain interest notes or coupons in writing, 56 numbered from thirty-one to fifty, inclusive, and which said coupons are facsimiles of each other except as to the number of the bond referred to by numbers on the coupons, one of which said coupons, to wit, No. 31, is in the words and figures following, to wit:

$50.] Interest warrant, Town of Amboy. [No. 31.

The Town of Amboy, State of Illinois, will pay to the bearer, on the first day of July, A. D. 1875, fifty dollars, at the office of the treasurer of Lee County, being one year's interest on the bond numbered above.

F. R. DUTCHER, *Supervisor.* J. T. TAIT, *Town Clerk.*

(Across the face in red ink:) 4.

And said plaintiff avers that said coupons, on the day and year in this count first above written, were duly delivered by said defendant to the Chicago and Rock River Railroad Company, and that they afterwards, to wit, on the same day and year, to wit, at said district, came to the possession of plaintiff, as owner and bearer thereof; and that she is still in the possession thereof as such owner and bearer. By reason whereof the said defendant became liable to pay to said plaintiff the said sums of money in said coupons mentioned according to the tenor and effect thereof, and being so liable, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place first above written, undertook and faithfully promised the said plaintiff well and truly to pay to 57 said plaintiff the said sums of money in said coupons mentioned according to the tenor and effect thereof. Yet the said defendant has not paid said coupons, or any or either of them, or any part thereof, although often requested so to do.

And whereas also said defendant, a body corporate situate in said district, on, to wit, the first day of April, A. D. 1876, at, to wit, said northern district, was, and still is, indebted to the plaintiff in the sum of fifteen hundred dollars, for money before that time paid, laid out, and expended by the plaintiff for the use of the defendant, at its request, and in the further sum of fifteen hundred dollars, for so much money before that time lent and accom'odated by the plaintiff to the defendant, at its request; and in the further sum of fifteen hundred dollars, for so much money before that time had and received by the defendant to the use of

the plaintiff; and in the further sum of fifteen hundred dollars, for money found to be due from the defendant to the plaintiff, on an account then and there stated between them; and in the further sum of fifteen hundred dollars, for so much money before that time due from the defendant to the plaintiff on an account then and there stated between them; and in the further sum of fifteen hundred dollars, for so much money before that time due from the defendant to the plaintiff for interest upon and for the
forbearance of divers large sums of money before then due from the
58 defendant to the plaintiff, and by the plaintiff forborne to the de-
fendant for long spaces of time before then elapsed, at the request
of the defendant, whereby the defendant became liable to pay the plaintiff the said several sums of money when it should be requested, and the defendant afterwards, to wit, on the day and year last aforesaid, in consideration of the premises, then and there promised to pay the said several sums of money to the plaintiff on request; yet the defendant has not, though often requested, paid the said several sums of money, nor either of them, nor any part thereof, to the damage of plaintiff fifteen hundred dollars; wherefore she brings suit.

By J. H. ROBERTS, *Her Att'y.*

Copy of instrument sued on.

20 interest coupons, Nos. 31 to 50, inclusive, due July 1st, 1875, for $50 ea., of which No. 31, copied in first count, is a fac simile in all respects, except the No. of the bonds referred to by corresponding Nos. on face of the coupons.

Common counts.

The Town of Amboy to Caroline C. Wetmore, Dr.

To money paid, laid out, and expended	$1,500
" " lent and accomodated	$1,500
" " had and received	$1,500
" " due on % stated	$1,500
" " due for interest	$1,500

(Endorsed:) Filed April 12, 1876. Wm. H. Bradley, cl'k.

59 United States circuit court, northern district of Illinois.

TUESDAY, *June* 20, A. D. 1876.

Present, Hon. Henry W. Blodgett, district judge.

CAROLINE C. WETMORE
v. } Assumpsit.
THE TOWN OF AMBOY.

Now comes the plaintiff, by her attorney, and it appearing to the court that the defendant had been duly served with process and had failed to plead, and it being now ruled to plead instanter, and it failing to plead or answer the rule, and the defendant being now three times solemnly called comes not, but makes default, it is thereupon considered by the court that its default be entered, and that the plaintiff have and recover of the defendant her damages; and, after hearing the evidence, the court finds that there is due to the plaintiff, on the nineteen coupons upon which this suit is founded, the sum of ten hundred and fifty-eight dollars and thirty-three cents. It is thereupon considered and adjudged by the court that the plaintiff do have and recover of the defendant the said sum of ten hundred and fifty-eight dollars and thirty-three cents, her damages so as aforesaid found, together with her costs and charges in this behalf expended, amounting to the sum of thirty-one dollars and fifty cents.

60 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the declaration filed April 12, 1876, and of the order of court entered of record June 20th, 1876, in said court, in the cause wherein Caroline C. Wetmore was the plaintiff and Town of Amboy was the defendant, as the same appears from the original files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this 27th day of August, A. D. 1879.

[SEAL.] WM. H. BRADLEY, *Clerk.*

STATE OF ILLINOIS,
Cook County, ss:

Thomas S. McClelland, being duly sworn, says that on the 5th day of Sept., 1879, he delivered the original notice and certified record, with the affidavit of James H. Roberts attached thereto, of which the above and foregoing is a copy, to James A. Hawley, esq., county clerk of Lee County, Illinois.

THOMAS S. McCLELLAND.

61 Subscribed and sworn to before me, the undersigned, a notary public of said county of Cook, this 6th day of Sept., 1879.

Witness my hand and notarial seal the day and year aforesaid.

[SEAL.] FRANK A. JOHNSON,
Notary Public.

EXHIBIT E.

COUNTY CLERK'S OFFICE,
Dixon, Ills., Oct. 18th, 1879.

THOS. S. McCLELLAND, Esq.:

DEAR SIR: At the September meeting, 1879, of the board of supervisors of Lee County the following order was entered of record Sept. 12th, 1879:

"On this day comes the State's attorney and states to the board that, in his opinion, the board has no power and is not authorized to take any action relative to the levy of a tax to pay interest or judgments upon Amboy railroad bonds, and thereupon said communication is concurred in by the board, and it is resolved that no action be taken relative to such tax levy."

In order to enable you to have no question about my refusal to levy, I now state that I absolutely refuse to levy any tax whatever upon any judgment in the United States circuit or district courts for the northern district of Illinois against the Town of Amboy, upon railroad aid 62 bonds or coupons, and I refuse to extend any tax to pay any interest due upon such bonds upon the tax book of the year 1879, and I decline to take any action upon the transcripts of judgments filed by you in the matter of such judgments.

Respectfully yours,

JAMES A. HAWLEY,
County Clerk.

In case you must have title of case included, please write out what you desire, and forward me for signature.

(Endorsed:) Filed Oct. 24, 1879. Wm. H. Bradley, cl'k.

On the same day, to wit, the 24th day of October, A. D. 1879, in the adjourned October term of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

THE UNITED STATES OF AMERICA, ON THE relation of J. H. Fairbanks et al.,
v.
JAMES A. HAWLEY, THE COUNTY CLERK OF Lee County, Illinois.
} Mandamus.

Now come the relators, by Thomas S. McClelland, esq., their attorney, and file their petition, praying for a writ of mandamus, and on motion of said attorney, it is ordered that a summons issue herein against 63 the defendant, and that the same be made returnable to the first Monday of November next.

And on the same day, to wit, the 24th day of October, A. D. 1879, a writ of summons issued out of said clerk's office in said entitled cause; which said writ, with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Writ of summons.

Circuit court of the United States of America, northern district of Illinois, ss:

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you to summon James A. Hawley, the county clerk of Lee County, in the State and northern district of Illinois, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of November next, to answer the petition this day filed of J. H. Fairbanks, William B. Skinner, George Thomas, Caroline C. Wetmore for a writ of mandamus, and have you then and there this writ.

64 Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 24th day of October, in the year of our Lord one thousand eight hundred and seventy-nine, and of our Independence the 104th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

I served the within writ by reading the same to and in the presence and hearing of James A. Hawley therein named, and also by delivering to him personally a true copy thereof on the 29th day of October, A. D. 1879.

JESSE S. HILDRUP,
U. S. Marshal,
By L. O. GILMAN, *Deputy.*

(Endorsed:) Filed Nov. 3d, 1879. Wm. H. Bradley, clerk.

On the same day, to wit, the 3rd day of November, A. D. 1879, in the adjourned October term of said court, in the record of the proceedings thereof in said entitled cause before the honorable Henry W. Blodgett, district judge, is the following entry, to wit:

THE UNITED STATES OF AMERICA, ON THE relation of J. H. Fairbanks et al.,
v.
JAMES A. HAWLEY, THE COUNTY CLERK OF LEE County, Illinois.
} Mandamus.

65 On motion of the respondent, by James K. Edsall, esq., his attorney, the time for him to answer is extended to the twenty-fourth instant.

Afterwards, to wit, on the 22d day of November, A. D. 1879, the said respondent, by James K. Edsall, his attorney, filed in said clerk's office his answer to the petition for mandamus in said entitled cause, which said answer is in the words and figures following, to wit:

Answer.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the United States circuit court, October term, A. D. 1879.

UNITED STATES OF AMERICA, EX REL. J. H. Fairbanks, William B. Skinner, George Thomas, and Caroline C. Wetmore,
vs.
JAMES A. HAWLEY, COUNTY CLERK OF LEE County, Illinois.

The answer of James A. Hawley, county clerk of Lee County, to the petition for mandamus of J. H. Fairbanks, William B. Skinner, George Thomas, and Caroline C. Wetmore, petitioners.

This respondent saving and reserving all right and benefit of exception to the errors, uncertainties, and insufficiencies of said petition, for answer thereto saith that he admits that said petitioners each severally 66 recovered judgment in said circuit court of the United States for the northern district of Illinois against The Town of Amboy, one of the towns of said Lee County, for the several amounts in said petition alleged, to wit, for the aggregate sum of $10,436.99 damages and costs of suit, as alleged in said petition.

This respondent has no personal knowledge as to what constituted the several causes of action upon which said judgments were so recovered, but has been informed by the notices in the petition mentioned and thereto attached as exhibits that said judgments were so recovered upon certain interest coupons (so called) which had been detached from bonds purporting to have been issued by said Town of Amboy to the Chicago and Rock River Railroad Company by virtue of the certain act of the general assembly of the State of Illinois, entitled "An act to incorporate the Chicago and Rock River Railroad Company," approved and in force March 24th, 1869, and also under a certain other act in force April 16, 1869, as hereinafter specified, and upon such information admits that said judgments were so recovered upon such coupons, but denies that the relators have been the owners of said coupons and the bonds from which the same were detached ever since the date of the issue of said bonds, as alleged in the petition.

67 As to the averment in said petition that the terms and conditions of said act of March 24th, 1869, have been fully complied with, etc., this respondent says, upon information and belief, that the terms of said act have not been and were not fully complied with, as alleged in the petition, and also says that the clerk of said Town of Amboy hath never transmitted to nor filed with the county clerk of said Lee County a certificate of the amount of bonds issued by said town under said act and the rate of interest payable thereon, nor any statement or certificate whatever in conformity to the requirements of the 12th section of said act, which is in these words:

"It shall be the duty of the clerk of any such city, town, or township, in which a vote shall be given in favor of subscription, within ten days thereafter, to transmit to the county clerk of their counties a transcript or statement of the vote given, and the amount so voted to be subscribed, and the rate of interest to be paid. Provided, that where elections shall be held and bonds issued, as aforesaid, it shall be the duty of the clerk of such town or township to file with the county clerk of their respective counties, within ten days after the issuing of said bonds, certificates of the amount of bonds issued, and the rate of interest payable thereon, and the number of each bond."

And, further answering, this respondent says that he is advised 68 by counsel, and submits to the court, that he has no authority under said act to extend taxes to pay interest upon said bonds unless such statement or certificate has been transmitted to and filed in the office of said county clerk, as required by the said 12th section of said act, which, according to the true intent or meaning of said act, is a condition precedent to the extension of such taxes under the 13th section of said act, and that no such certificate or statement has ever been filed in the office of or with the county clerk of said Lee County.

And, further answering, this respondent says that while it may be true that the board of town auditors of said Town of Amboy have audited and allowed said judgments so recovered against the said town, as stated in said petition, yet no statement or certificate thereof has ever been certified to or filed with the county clerk of said Lee County by the clerk of said town or otherwise, and that, as respondent is advised by counsel and submits to the court, he has no power or authority to extend taxes to pay such judgments until the same shall have been certified to the county clerk of said Lee County by the town clerk of said town, as provided in the statutes in that behalf; and that this respondent hath annually, while he hath held said office of county clerk of said Lee County, extended
69 upon the tax books of said town all taxes which were certified to him by the clerk of said town, as required by law.

And, further answering, this respondent says that each of said bonds contains a recital upon the face thereof to this effect: This bond is issued "under a law of the State of Illinois, entitled 'An act to fund and provide for the paying of the railroad debts of counties, townships, cities, and towns,' in force April 16th, 1869, and when this bond is registered in the State auditor's office of the State of Illinois the interest and principal will be paid by the State treasury, as provided by said last-mentioned law."

And that the said Chicago and Rock River Railroad Company, by Alonzo Kinyon, its president, who was then the holder of said bonds, to wit, on the 8th day of April, A. D. 1872, instead of having the amount of bonds so issued, and rate of interest payable thereon, certified to the county clerk of said Lee County, as directed by the 12th section of the said act of March 24th, 1869, to incorporate the Chicago and Rock River Railroad Company, elected to register and did register the said bonds in the office of the auditor of public accounts of the State of Illinois, at Springfield, in said State, to wit, on the 8th day of April, 1872, as by the records of said auditor's office more fully appears, under and in pursuance of the provisions of the said act of the general assembly of the
70 State of Illinois, entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," passed and in force April 16th, 1869.

And this respondent further states that he is advised by counsel, and submits to this honorable court, that as to such registered bonds he has no power or authority to extend taxes to pay the interest accruing thereon, except as the same may be certified to him by the auditor of public accounts of the State of Illinois in pursuance of the fourth section of said last-mentioned act (Revised Statutes of 1874, p. 793). Respondent further states that for the years 1872 and 1873 the said auditor of public accounts certified to this respondent, as such county clerk, the estimated rate per cent. to pay the annual interest accruing on said bonds, as required by the said fourth section of said last mentioned act, and that this respondent thereupon extended such rate per cent. for each of said years upon the tax collector's books for said Town of Amboy, as required by said act in force April 16, 1869, and that the collection of said taxes so extended was subsequently enjoined by the circuit court of Lee County; and that said auditor of public accounts hath not certified to said county clerk the rate per cent. to pay such interest for any other years than those for which respondent so extended such taxes. And as to all and singular the averments in said peti-

tion contained and not herein expressly admitted this respondent
71 denies the same in manner and form as alleged in said petition.

And further, answering, this respondent states and shows to the court that heretofore, to wit, on the 12th day of October, A. D. 1874, and before the said suits were commenced in the circuit court of the United States in which said judgments were recovered against said Town of Amboy, the said Town of Amboy, with Simon Badger and Lemuel Bourne, two of the citizens and taxpayers of said town, as complainants, filed their bill of complaint in the circuit court of the county of Lee, in the State of Illinois, against this respondent, as county clerk of said Lee County; Josiah Little, treasurer and ex-officio collector of said Lee County; Michael Carroll, the collector of said Town of Amboy; Charles E. Lippincott, auditor of public accounts of the State of Illinois, and the said Chicago and Rock River Railroad Company (to which said bonds were issued) as defendants, and in and by said bill set up and averred divers matters touching the validity of said bonds, and denied that the said railroad company complied with the conditions of the law and vote upon which said bonds were authorized to be issued, and also denied the authority of the supervisor and town clerk of said town to sign or issue the same, and in and by said bill prayed that the said Charles E. Lippincott, the said auditor of public accounts, and his successors in office, be restrained from certifying to the county clerk of said Lee County any per centum to be
72 levied as tax to pay the principal or interest of the said bonds and
interest coupons, or in any way attempting to authorize the levy of tax by virtue of said act in force April 16th, 1869, and also that this respondent, the county clerk of said Lee County, and his successors in office, be restrained from extending on the tax lists of said county, or of said Town of Amboy, any tax whatever (whether certified by the auditor or not, to pay either the principal or interest of said bonds or interest coupons; and also that the said Josiah Little, the county collector of said county, and Michael Carroll, the town collector of said Town of Amboy, and their respective successors in office, be restrained from collecting any such tax or any part thereof, and for general relief. And that on said 12th day of October, 1874, a temporary injunction was awarded by the master in chancery of said Lee County in accordance with the prayer of said bill, which was thereupon issued from the office of the clerk of the circuit court, of said Lee County under the hand of the clerk of said circuit court and the seal of said Lee circuit court; and afterwards, to wit, on the 14th day of October, 1874, said writ of injunction was served upon this respondent, as was also the certain summons issued from the office of the clerk of said Lee circuit court in said cause gainst this respondent and the other defendants therein.

And further answering, this respondent says that such proceed-
73 ings were thereupon had in said cause so instituted in said circuit
court of Lee County (process of summons having been duly served upon all the said defendants therein), that afterwards, to wit, on the 30th day of October, A. D. 1874, and at the October term of said court for that year, the said circuit court of Lee County passed a final decree in said cause whereby the said temporary injunction so issued in said cause was

made perpetual against the said defendants therein and their successors, and the said auditor of public accounts of the State of Illinois and his successors in office were perpetually enjoined from issuing any certificate authorizing or commanding the extending of any taxes for the purpose of paying either the principal or interest of said bonds or coupons against the taxpayers of said Town of Amboy, and the county clerk of said county and his successors in office were also perpetually enjoined from issuing any certificate authorizing or commanding the extending of any taxes for the purpose of paying either the principal or interest of said bonds or coupons against the taxpayers of said Town of Amboy; and the county clerk of said county and his successors in office were also perpetually enjoined from extending any tax to pay either the principal or interest of said bonds, whether certified to him by the auditor of public accounts or otherwise; and the said county collector of said Lee County and town collector of said Town of Amboy were each thereby perpetually enjoined from collecting any such tax, or any part thereof, as by a duly authenticated copy of the said decree so passed and entered of record in said circuit court of Lee County and of the bill of complaint and other proceedings in
74 said cause (ready to be produced) will more fully appear, and that said decree of the said circuit court of Lee County is still in full force and effect unreversed or otherwise set aside.

And this respondent further states that the said interest coupons upon which said judgments in said petition mentioned were so recovered, represent the same interest and are a part of the same interest coupons which this respondent, as such county clerk, was and is so perpetually enjoined by said circuit court of Lee County from extending any tax as aforesaid to pay, and not other and different.

And the respondent further states that the said decree of the circuit court of Lee County was so made and passed by that court before the said suits or either of them were brought or commenced in the said circuit court of the United States for the northern district of Illinois, upon which said judgments in the petition mentioned were recovered; and that this respondent cannot extend taxes as requested by the said relators without violating the said injunction so awarded and decreed by the said circuit court of Lee County, and subjecting himself to prosecution for contempt of that court. And that for the reasons aforesaid this respondent hath refused and declined to extend any other taxes to pay such interest or said judgments than those extended for the years 1872 and 1873, in manner aforesaid.

75 And having fully answered, this respondent prays to be hence dismissed, &c., with his reasonable costs, &c.

JAMES A. HAWLEY,
County Clerk of Lee County, Respondent.

JAS. K. EDSALL,
Att'y and of Counsel for Respondent.

(Endorsed:) Filed Nov. 22, 1879. Wm. H. Bradley, cl'k.

And on the same day, to wit, the 22d day of November, A. D. 1879, said relators, by their attorneys, filed in said clerk's office their demurrer to the answer of said respondent in said entitled cause, which said demurrer is in the words and figures following, to wit:

Demurrer.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court of the United States. October term, A. D. 1879.

THE UNITED STATES OF AMERICA, UPON THE relation of J. H. Fairbanks, William B. Skinner, George Thomas, and Caroline C. Wetmore, *v.* JAMES A. HAWLEY, COUNTY CLERK OF LEE County, Illinois.	Mandamus. Gen'l No. 16711.

Demurrer to answer.

76 Now come said relators, by Roberts and Hutchinson and Thomas S. McClelland, their attorneys, and as to the answer of said defendant, and each and every allegation thereof, to the petition filed in said cause, say that said answer and the matters contained therein in manner and form as the same are in said answer set forth are not sufficient in law to bar them, said relators, from maintaining their aforesaid action, and that these relators are not bound to reply to said answer or plead thereto, and this they are ready to verify.

Wherefore for want of sufficient answer in this behalf the relators pray judgment and their damages, &c., to be adjudged to them, &c.

ROBERTS AND HUTCHINSON,
THOMAS S. McCLELLAND,
Attorneys for said Relators.

(Endorsed:) Filed Nov. 22, 1879. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the 29th day of November, A. D. 1879, in the adjourned October term of said court, in the record of the proceedings thereof in said entitled cause before the honorable Henry W. Blodgett, district judge, is the following entry, to wit:

THE UNITED STATES OF AMERICA, EX REL. J. H. Fairbanks, William B. Skinner, George Thomas, and Caroline C. Wetmore, 77 *vs.* JAMES A. HAWLEY, COUNTY CLERK OF Lee County, Illinois.	Mandamus.

Now, on this day come said relators, by Roberts and Hutchinson and Thomas S. McClelland, their attorneys, and the said respondent, by James K. Edsall, his attorney, and said cause now coming on to be heard upon the demurrer of said relators filed to the answer of said respondent, and the said cause having been argued by counsel for the respective parties hereto, and the court being fully advised in the premises, doth find that the answer of said respondent is not sufficient in law to defeat said action, and that said demurrer is well taken, wherefore said demurrer is sustained, and for want of a sufficient answer to said petition the court doth find the issues for the relators, and that the said relators are entitled to the relief prayed. And it appearing to the court that the judgment mentioned in the petition herein was rendered for interest upon bonds issued by said Town of Amboy in pursuance of the provisions of an act of the general assembly of the State of Illinois, approved March 24, A. D. 1869, entitled "An act to incorporate the Chicago and Rock River Railroad Company," therefore it is hereby ordered and considered by the court that said relators have and recover of said respondent for the damages herein the sum of one dollar 78 and also their costs in this behalf expended to be taxed, and that relators have execution therefor against said respondent. It is further ordered by the court that a peremptory writ of mandamus issue out of this court, directed to said respondent as county clerk of the county of Lee, and State of Illinois, commanding him as such county clerk, to extend upon the tax-collector's books of the town of Amboy, in said Lee County, for the year A. D. 1879, a sum sufficient to pay the judgments of each and every of said relators as set out in the petition filed in said cause, together with a sum sufficient to pay interest upon each and every of said judgments from the rendition thereof up to the time when the sum shall be paid, also the taxable costs of each and every of said judgments and all costs and expenses attending the collection and paying out of such taxes; that is to say, that said respondent as such county clerk be commanded to extend upon the tax collector's books of said The Town of Amboy for the year A. D. 1879, in the same manner as other taxes are extended and spread upon the collector's books of said town, a sum sufficient to pay a certain judgment obtained in said court March 13, 1878, in favor of said Fairbanks, and against said The Town of Amboy for the sum of twenty-four hundred and forty-nine dollars, and the further sum of thirty- 79 six dollars and twelve cents costs of suit, and also an additional sum sufficient to pay all interest that may accrue upon said judgment at the rate of six per centum per annum from the date of said judgment until the same shall be fully paid, and also a sum sufficient to pay all the costs of collecting said taxes and extending the same as aforesaid.

Also that said respondent, as such clerk, be commanded to extend upon the collector's books of said The Town of Amboy for the year A. D. 1879, in the same manner as other taxes are extended and spread upon the tax collector's books of said town, a sum sufficient to pay a certain other judgment, recovered in said court January 24, 1878, in favor of said Skinner and against said town for the sum of two thousand and eighteen dollars and fifty cents and the further sum of forty-seven dollars and ten cents costs of suit, and also a sum, additional thereto, sufficient to pay all interest which may accrue upon said judgment at the rate of six per cent. from the date of said judgment until the same shall be fully paid, and also a sum sufficient to pay all costs of extending and collecting such taxes.

Also that said respondent, as such clerk, be commanded to extend upon the tax collector's books of said The Town of Amboy for the year A. D. 1879, in the same manner as other taxes are extended and spread upon 80 the tax collector's books of said town, a sum sufficient to pay a certain other judgment, recovered in said court November 29, 1875, in favor of said George Thomas and against said town for the sum of eight hundred and sixty-six dollars, and the further sum of forty-three dollars and ninety cents costs of suit, and also a sum additional thereto sufficient to pay all interest which may accrue upon said judgment at the rate of six per cent. from the date of said judgment until the same shall be fully paid, and also a sum sufficient to pay all costs of extending and collecting such taxes.

Also that said respondent, as such clerk, be commanded to extend upon the tax collector's books of said The Town of Amboy for the year A. D. 1879, in the same manner as other taxes are extended and spread upon the tax collector's books of said town, a sum sufficient to pay a certain other judgment, recovered in said court December 17, 1875, in favor of said Caroline C. Wetmore and against said town for the sum three thousand eight hundred and thirty-six dollars and fourteen cents, and the further sum of fifty dollars and forty cents costs of suit, and also a sum, additional thereto, sufficient to pay all interest which may accrue upon said judgment at the rate of six per cent. from the date of said judgment until the same shall be fully paid, and also a sum sufficient to pay all costs of extending
and collecting such taxes. Also that said respondent, as such clerk,
81 be commanded to extend upon the tax collector's books of said The
Town of Amboy for the year A. D. 1879, in the same manner as other taxes are extended and spread upon the tax collector's books of said town, a sum sufficient to pay a certain other judgment, recovered in said court January 20, 1876, in favor of said Caroline C. Wetmore and against said town for the sum of ten hundred and fifty-eight dollars and thirty-three cents, and the further sum of thirty-one dollars and fifty cents costs of suit, and also a sum additional thereto sufficient to pay all interest which may accrue upon said judgment at the rate of six per cent. from the date of said judgment until the same shall be fully paid, and also a sum sufficient to pay all costs of extending and collecting such taxes, which said judgments and each and every of them were rendered upon the instruments and in the manner set forth in said petition and the exhibits attached thereto, and that said respondent, as such county clerk, do and perform all other acts and things in the premises as he is by law required to do, and more especially under and by virtue of an act of the legislature of the State of Illinois, entitled "An act to incorporate The Chicago and Rock River Railroad Company," approved and in force March 24, 1869, that may be necessary in spreading and extending upon the collector's war-
rants or tax collector's books of said The Town of Amboy a sum
82 sufficient to pay all said judgments, costs, interest, and costs of col-
lection as aforesaid, in order to enable the collector of said Town of Amboy, or the county treasurer of said county of Lee as ex officio collector, to collect a tax upon the taxable property of said Town of Amboy sufficient to satisfy each and every of said judgments as aforesaid, and that said respondent do and perform all such acts and things without delay or hindrances and in accordance with law, and that he perform his duty in this behalf before he shall turn over said collector's warrants or tax collector's books to the collector for said The Town of Amboy, and that he, said respondent, make due return thereof to said court in what he shall have executed said writ, under his hand, on or before the fifteenth day of December, instant.

And afterwards, to wit, on the 13th day of December, A. D. 1879, said defendant, by his attorney, filed in said clerk's office his bond in said entitled cause, which said bond is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, The Town of Amboy, by Isaac Edwards, supervisor, Joseph B. Graves, Isaac Edwards, Everett E. Chase, A. N. Shoemaker, Ira S. Smith, Dwight W. Slauter, J. B. Felker, R. H. Mellen, C. D. Vaughn, Martin Maus, George F. Woods, 83 and J. E. Lewis, residents of the town of Amboy, in the county of Lee and State of Illinois, *of the county of Lee and State of Illinois*,* are held and firmly bound unto J. H. Fairbanks, William B. Skinner, George Thomas, and Caroline C. Wetmore in the penal sum of eleven thousand dollars, for the payment of which well and truly to be made we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Signed with our names and sealed with our seals this 12th day of December, A. D. 1879.

Whereas James A. Hawley, county clerk of Lee County, hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered by the circuit court of the United States for the northern district of Illinois on the 29th day of November, A. D. 1879, in a certain cause lately pending in said circuit court, entitled thus: United States of America, ex rel. J. H. Fairbanks, William B. Skinner, George Thomas, and Caroline C. Wetmore, vs. James A. Hawley, county clerk of Lee county, Illinois, as by the records of said circuit court in that behalf will more fully appear:

Now, therefore, the condition of this obligation is such that if the said James A. Hawley shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, 84 then this obligation to be void, otherwise to remain in full force and effect.

THE TOWN OF AMBOY, [SEAL.]
By ISAAC EDWARDS, *Supervisor*. [SEAL.]
JOSEPH B. GRAVES. [SEAL.]
ISAAC EDWARDS. [SEAL.]
A. N. SHOEMAKER. [SEAL.]
EVERETT E. CHASE. [SEAL.]
IRA S. SMITH. [SEAL.]
DWIGHT W. SLAUTER. [SEAL.]
J. B. FELKER. [SEAL.]
R. H. MELLEN. [SEAL.]
C. D. VAUGHAN. [SEAL.]
MARTIN MAUS. [SEAL.]
GEO. F. WOODS. [SEAL.]
J. E. LEWIS. [SEAL.]

In presence of—
J. E. LEWIS.

Approved.

H. W. BLODGETT, *Judge*.

(Endorsed:) Filed Dec'b. 13, 1879. Wm. H. Bradley, cl'k.

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* Sic in original.

85 NORTHERN DISTRICT OF ILLINOIS, *sct:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in the cause wherein The United States of America, ex rel. J. H. Fairbanks et al., are the plaintiffs and James A. Hawley, county clerk of Lee County, Illinois, is the defendant, as the same appears from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this 12th day of May, A. D. 1880, and of our Independence the one hundred and fourth year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

86 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is before you in the said circuit court between the United States of America ex rel. J. H. Fairbanks, William B. Skinner, George Thomas, and Caroline C. Wetmore, plaintiffs, and James A. Hawley, county clerk of Lee County, Illinois, defendant, a manifest error hath happened to the great damage of the said James A. Hawley, county clerk of Lee County, Illinois, as by his complaint appears; and it being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1880, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this ninth day of December, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the 104th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

(Indorsed:) Supreme Court of the United States. United States, ex rel. J. H. Fairbanks, Wm. B. Skinner, Geo. Thomas, & Caroline C. Wetmore, vs. James A. Hawley, county clerk of Lee County, Illinois. Writ of error.

87 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To The United States of America, ex rel. J. H. Fairbanks, William B. Skinner, George Thomas, and Caroline C. Wetmore, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, A. D. 1880, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein James A. Hawley, county clerk of Lee County, Illinois, is plaintiff in error and you are defendants in error, to show cause, if any there be, why the certain judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry W. Blodgett, district judge, presiding in said circuit court, this thirteenth day of December, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.] H. W. BLODGETT, *Judge.*

88 (Indorsed:) Supreme Court of the United States. James A. Hawley, county clerk, etc., pl'ff in error, vs. United States, ex relatione J. H. Fairbanks et al. Citation to October term, A. D. 1880.

We hereby admit service of the within citation upon us this 13th day of December, A. D. 1879.

THOMAS S. McCLELLAND,
ROBERTS & HUTCHENSON,
Attorneys for Relators.

Cost of this transcript, $59.70, paid July 29, 1880, by James K. Edsall, esq.

WM. H. BRADLEY, *Clerk.*

89 Supreme Court of the United States, October term, A. D. 1880.

JAMES A. HAWLEY, COUNTY CLERK OF LEE county, Illinois, pl't'ff in error,
vs.
UNITED STATES, EX REL. J. H. FAIRBANKS, William B. Skinner, George Thomas, and Caroline C. Wetmore, def'ts in error.

Error to circuit court of the northern district of Illinois.

And now comes the said plaintiff in error, by Edsall and Hawley, his attorneys, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

1. That the court below erred in sustaining the demurrer to the answer.
2. That the said court erred in not carrying back the demurrer and sustaining the same to the petition.
3. That the said court erred in rendering judgment against the defendant below, and awarding a peremptory mandamus in manner aforesaid.

And for which said errors the plaintiff prays that the said judgment may be reversed, &c.

EDSALL & HAWLEY,
Attorneys for Plaintiff in error.

(Indorsement on cover:) No. 263. James A. Hawley, county clerk of Lee County, Illinois, plaintiff in error, vs. The United States, ex rel. J. H. Fairbanks, Wm. B. Skinner, George Thomas, and Caroline C. Wetmore. N. Illinois C. C. U. S. Filed September 14, 1880.

108-543

OFFICE SUPREME COURT U.S.
FILED
FEB 27 1883
JAMES H. McKENNEY, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1882.

No. 263.

JAMES A. HAWLEY, COUNTY CLERK,
Plaintiff in Error,
v.
U. S. EX. REL. J. H. FAIRBANKS, ET. AL,
Defendants in Error.

ERROR TO CIRCUIT COURT U. S., NORTHERN DISTRICT ILLINOIS.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

JAMES K. EDSALL & JOHN B. HAWLEY,
Counsel for Plaintiff in Error.

CHICAGO:
THORP, WEST & CO., LEGAL PRINTERS, 111 MADISON STREET.
1883.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1882.

JAMES A. HAWLEY, County Clerk, Plaintiff in Error,

vs.

THE UNITED STATES, *ex rel*, J. H. FAIRBANKS, WILLIAM B. SKINNER, GEORGE THOMAS, and CAROLINE C. WETMORE, Defendants in Error.

In Error to the Circuit Court of the United States for the Northern District of Illinois.

STATEMENT OF CASE.

This was a petition for mandamus filed in the Court below, by the relators above named, against the County Clerk of Lee County in the State of Illinois, to compel that officer to extend upon the books for the collection of State, county, town and other municipal taxes in the Town of Amboy in said county, a tax to raise money to pay certain judgments which had been recovered against the Town of Amboy, in the United States Circuit Court for the Northern District of Illinois, by the relators, amounting in the aggregate to $10,436.99 damages and costs of suit. After stating the recovery of the judgments the petition proceeds thus:

"Your petitioners further aver that said judgments and each and every of them were recovered upon instruments called railroad interest warrants or coupons detached from railroad bonds, and were issued by said The Town of Amboy under and by virtue of an act of the Legislature of the State of Illinois, entitled 'An act to incorporate the Chicago and Rock River Railroad Company,' approved and in force March 24, 1869, and which by its terms was made a public act.

"Your petitioners further show unto the Court that the terms and conditions of said act of March 24, 1869, have been fully complied with, and that your petitioners are, and have been from the date of the issue of the bonds from which said coupons were cut, the owners of the coupons sued on and the bonds respectively from which they were detached, as shown by the pleadings in said several cases respectively, and upon which said respective judgments were obtained.

"Your petitioners further aver that said judgments, and each and every of them, have been duly audited and allowed by the auditing town board of said Town of Amboy, as provided by law, but your petitioners aver that the town clerk of said Town of Amboy, whose lawful duty it is to certify to the county clerk of said Lee county, on or before the second Tuesday in August in each and every year, the amount of taxes to be levied and collected to meet all debts and demands and obligations against said town for the current year, for the purpose of having said County Clerk extend the same upon the tax or collector's books of said town, and thereby make provision for assessing and collecting taxes upon the taxable property of said town to pay said judgments and costs, and each and every of them, and interest upon the same to the time of payment, fraudulently colluding and conniving with the other officers and the people of said Town of Amboy with the design of preventing the collections of said judgments, has from year to year since said judgments were obtained wholly failed and refused to certify said judgments, or any or either of them, to said county clerk, and in fraud of the rights of your petitioners has absconded and kept himself concealed to avoid and escape the process of this court, or any rule of this court requiring him as such clerk to execute the duty of his office in that behalf; and, as your petitioners are advised and believe, the said town clerk has absconded and concealed himself for the purpose aforesaid in collusion with the people of said town and at the expense of the said town.

"Your petitioners further show that by the terms of said act of the legislature, entitled as aforesaid, it was therein provided and made the duty of the County Clerk of said Lee County, annually, after the execution and delivery of said bonds and coupons, to compute and assess upon all the taxable property of said Town of Amboy a sum sufficient to pay the interest warrants or coupons attached to said bonds, and the said bonds themselves as they severally become due and payable, as well as the costs of collection and disbursement, and extend such tax upon the tax and collector's books of said town as other taxes are extended, and to assess upon the property of said town an annual rate sufficient to provide a fund for the redemption of the principal and interest of said bonds as they matured and became due.

"Your petitioners further show that although said judgments, and each and every one of them, were obtained upon interest coupons cut from the bonds of said town, issued under said act of March 24, 1869, a tax for the payment of which the County Clerk of Lee County was by law directed to compute and assess, and extend upon the collector's books of said town as other taxes annually, as said interest coupons might mature, yet the said County Clerk of said county has neglected and refused, and still does neglect and refuse, to compute and assess upon the taxable property of said town any tax whatever to meet and pay said interest as it has matured and become due and payable."

Printed Record, p. 2.

The petition concedes that the Town Clerk had not certified to the County Clerk the amount of the judgments as audited by the town board, but avers that petitioners had caused certified copies of the judgments to be presented to the County Clerk, which included such portions of the pleadings in the several suits, wherein the judgments had been recovered, as would show the causes of action upon which the same were recovered; and also avers that the petitioners had requested the County Clerk "to compute and assess upon all the taxable property in said Town of Amboy a sum sufficient to pay all of said judgments," etc., and that he refused to comply with such request.

The petition prays that the said Hawley, as County Clerk, be summoned to "show cause why he should not, as such clerk, compute and assess upon the taxable property returned by the assessor of said Town of Amboy, a sum sufficient to pay said judgments, and each and every of them, together with interest on the same until they are fully paid with costs of suit in each case, together with costs of collecting and disbursing the same," etc., "and that upon the final hearing, a rule absolute may be entered requiring the said James A. Hawley to make said computation and assessment and extend the same," etc.

The respondent, in accordance with the practice in the State Courts, filed an answer to the petition, in which he admitted the recovery of judgments against the town as alleged, to the amount of $10,436.99, and also stated that: "As to the averment in said petition that the terms and conditions of said act of March 24th, 1869, have been fully complied with, etc., this respondent says, upon information and belief, that the terms of said act have not been and were not fully complied with, as alleged in the petition, and also says that the clerk of said Town of Amboy hath never transmitted to, nor filed with, the County Clerk of said Lee County, a certificate of the amount of bond issued by said town under said act, and the rate of interest payable thereon; nor any statement or certificate whatever in conformity to the requirements of the 12th section of said act, which is in these words:

"'§ 12. It shall be the duty of the clerk of any such city, town or township, in which a vote shall be given in favor of subscription, within ten days thereafter, to transmit to the county clerk of their counties a transcript or statement of the vote given, and the amount so voted to be subscribed, and the rate of interest to be paid. Provided, that where elections shall be held and bonds issued, as aforesaid, it shall be the duty of the clerk of such town or township to file with the county clerk of their respective counties, within ten days after the issuing of said bonds, certificates of the amount of bonds issued, and the rate of interest payable thereon, and the number of each bond.'

"And, further answering, this respondent says that he is advised by counsel, and submits to the Court, that he has no authority, under said act, to extend taxes to pay interest upon said bonds unless such statement or certificate has been transmitted to and filed in the office of said county clerk, as required by the said 12th section of said act; which, according to the true intent and meaning of said act, is a condition precedent to the extension of such taxes under the 13th section of said act; and that no such certificate or statement has ever been filed in the office of, or with, the County Clerk of said Lee County.

"And further answering, this respondent says, that while it may be true that the board of town auditors of said Town of Amboy have audited and allowed said judgments so recovered against the said town, as stated in said petition, yet no statement or certificate thereof has ever been certified to, or filed with, the county clerk of said Lee County by the clerk of said town or otherwise; and that, as respondent is advised by counsel, and submits to the Court, he has no power or authority to extend taxes to pay such judgments until the same shall have been certified to the county clerk of said Lee County by the town clerk of said town, as provided in the statutes in that behalf; and that this respondent hath annually, while he hath held said office of county clerk of said Lee County, extended upon the tax books of said town all taxes which were certified to him by the clerk of said town, as required by law.

"And, further answering, this respondent says that each of said bonds contains a recital upon the face thereof to this effect: 'This bond is issued under a law of the State of Illinois, entitled 'An act to fund and provide for the paying of the railroad debts of counties, townships, cities and towns,' in force April 16th, 1869, and when this bond is registered in the State auditor's office of the State of Illinois, the interest and principal will be paid by the State treasury, as provided by said last-mentioned law,' and that the said Chicago and Rock River Railroad Company, by Alonzo Kinyon, its president, who was then the holder of said bonds, to wit, on the 8th day of April, A. D. 1872, instead of having the amount of bonds so issued, and rate of interest payable thereon, certified to the county clerk of said Lee County, as directed by the 12th section of the said act of March 24th, 1869, to incorporate the Chicago and Rock River Railroad Company, elected to register, and did register the said bonds in the office of the auditor of public accounts of the State of Illinois, at Springfield, in said State, to wit, on the 8th day of April, 1872, as by the records of said auditor's office more fully appears, under and in pursuance of the provision of the said act of the general assembly of the State of Illinois, entitled 'An act to fund and provide for paying the railroad debts of counties, townships, cities and towns,' passed and in force April 16, 1869.

"And this respondent further states that he is advised by counsel, and submits to this honorable Court, that as to such registered bonds he has no power or authority to extend taxes to pay the interest accruing thereon, except as the same may be certified to him by the auditor of public accounts of the State of Illinois, in pursuance of the fourth section of said last mentioned act. (Revised Statutes of 1874, p. 793.) Respondent further states that for the years 1872 and 1873 the said auditor of public accounts certified to this respondent, as such county clerk, the estimated rate per cent. to pay the annual interest accruing on said bonds, as required by the said fourth section of said last-mentioned act, and that this respondent thereupon extended such rate per cent. for each of said years upon the tax collector's books for said town of Amboy, as required by said act in force April 16, 1869, and that the collection of said taxes so extended was subsequently enjoined by the Circuit Court of Lee County; and that said auditor of public accounts hath not certified to said county clerk the rate per cent. to pay such interest for any other years than those for which respondent so extended such taxes. And as to all and singular the averments in said petition contained, and not herein expressly admitted, this respondent denies the same in manner and form as alleged in said petition."

Printed Record, pp. 31–33.

The case was heard upon a general demurrer to the answer. The Circuit Court sustained the demurrer, and in pursuance of the prayer of the petition entered judgment against the respondent as county clerk, commanding him to extend upon the tax collector's books of said Town of Amboy for the year A. D. 1879, in the same manner as other taxes are extended, a sufficient sum to pay said "several judgments for damages and costs; and also an additional sum sufficient to pay all interest on said judgments from their respective dates, at the rate of six per cent. per annum, until the same shall be fully paid," concluding as follows: "and that said respondent, as such county clerk, do and perform all other acts and things in the premises as he is by law required to do, and more especially under and by virtue of an act of the Legislature of the State of Illinois, entitled 'An act to incorporate The Chicago and Rock River Railroad Company,' approved and in force March 24th, 1869, that may be necessary in spreading and extending upon the collector's warrants or tax collector's books of the said Town of Amboy a sum sufficient to pay all said judgments, costs, interest and costs of collection, as aforesaid, in order to enable the collector of said Town of Amboy, or the county treasurer of said county of Lee as ex-officio collector, to collect a tax upon the taxable property of said Town of Amboy sufficient to satisfy each any every of said judgments, as aforesaid."

Printed Record, p. 37.

From this judgment the said James A. Hawley, county clerk, etc., prosecuted the pending writ of error, and has made upon the record the following

ASSIGNMENT OF ERRORS.

1. That the Court below erred in sustaining the demurrer to the answer.

2. That the said Court erred in not carrying back the demurrer and sustaining the same to the petition.

3. That the said Court erred in rendering judgment against the defendant below, and awarding a peremptory mandamus in manner aforesaid.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

I.

The writ of mandamus confers no authority upon an officer to whom it is directed; and only lies to coerce the performance of duties imposed by law.

In the language of this Court in a similar case: "It need not be said that no court will by *mandamus* compel county officers of a State to do what they are not authorized to do by the laws of the State. A *mandamus* does not confer power upon those to whom it is directed. It only enforces the exercise of power already existing, when its exercise is a duty."

United States v. *County of Clark*, 95 U. S., 769, 773.

The demurrer admits the truth of the answer, which denies all the allegations of the petition not expressly admitted; and unless upon the facts as thus admitted and stated in the answer it appears that the law gave the County Clerk authority, and made it his legal duty to extend taxes upon the tax books of the Town of Amboy sufficient to pay these judgments, the demurrer to the answer should have been overruled, and the mandamus denied. It was claimed in the petition, and appears to have been held by the Circuit Court (Printed Record, pp. 3, 37), that this power and duty was imposed upon the County Clerk by "An act to incorporate the Chicago and Rock River Railroad Company," approved March 24, 1869. The judgment of the Court below in express terms enjoins the performance of the duties in respect to the extension of taxes imposed by that act, and appears to have been based thereon. The principal question arising upon the record, therefore, is:

II.

Did the act of March 4, 1869, to incorporate this railroad company make it the duty of the County Clerk, upon the facts as they appear from the answer, to extend a tax against property in the Town of Amboy to pay said judgments?

1. That act contains the following sections:

"§ 12. It shall be the duty of the clerk of any such city, town or township, in which a vote shall be given in favor of subscription, within ten days thereafter, to transmit to the county clerk of their counties a transcript or statement of the vote given, and the amount so voted to be subscribed, and the rate of interest to be paid. *Provided*, that when elections shall be held and bonds issued, as aforesaid, it shall be the duty of the clerk of such town or township to file with the county clerk of their respective counties, within ten days after the issuing of said bonds, certificates of the amount of bonds issued, and the rate of interest payable thereon, and number of each bond.

"§ 13. It shall be the duty of the county clerk of said county, annually, after the execution and delivering of such bonds aforesaid, to compute and [illegible] ~~pass~~ upon all the taxable property returned by the assessor of such city, town or township, a sum sufficient to pay the interest and costs of collection and disbursements upon all bonds so issued by the respective cities, towns or townships; which tax shall be extended upon the collector's books as other taxes are, and, when collected, shall be paid to the treasurer of the county; and such city, town or township shall, when providing for the levying and collecting of other taxes, also assess upon the property of such city, town or township, any rate not exceeding three per cent. in any one year, upon the assessment, to provide a fund for the redemption of the principal and interest of such bonds as or when they become due—said taxes to be levied and collected as other taxes are; but no tax shall be computed, assessed or collected, or any interest paid, to be applied upon said bonds, unless such bonds have been executed and delivered."

2 Private Laws of Ill. of 1869, p. 968.

There are no other provisions in this act, in anywise imposing any duty upon the County Clerk in respect to the extension of taxes. The answer shows that there has never been any transcript, statement or certificate transmitted to, or filed with, the County Clerk, showing the amount of bonds voted, or issued with the rate of interest to be paid thereon, but that the requirements of said § 12, in this regard, have not in any particular been complied with.

The County Clerk is a mere ministerial officer. He is not an officer of the Town, but of the County. He has no right to extend taxes to be collected from the taxable property in the Town to pay Town debts in any other cases than those prescribed by law; and in the performance of such duty he is required to act (and only to act) upon the data which the law requires to be placed before him, and filed in his office for that purpose.

The manifest purpose of § 12 was to authorize and require a statement and certificate of the necessary facts to be filed in the office of the County Clerk upon which he could compute and extend taxes for the purposes specified in § 13. Section 12 not only requires the town clerk to transmit to the county clerk "a transcript or statement of the vote given, and amount voted to be subscribed, and the interest to be paid," but also requires the clerk of the town to file with the county clerk within ten days after the issuing of said bonds "certificates of the amount of bonds issued, and the number of each bond." The section concludes with the express injunction that "no tax shall be computed, assessed or collected, or any interest paid, to be applied on said bonds, unless such bonds have been executed and delivered."

Without the certificate required by § 12, how is the county clerk to officially know what bonds have been executed and delivered?

He cannot, we insist, officially know this fact, and therefore has no authority to extend the tax, until the official certificates required by § 12 are filed in his office.

It was so held by the Supreme Court of Illinois in a case much less favorable to the position of the county clerk than the present.

S. & I. S. R'y Co. v. *County Clerk*, 74 Ill., 27.

The act to incorporate the Illinois Southeastern Railway Company, under which the vote was taken in the case last cited, contains the following in respect to donations by towns to aid in building the road:

"§ 9. Any town in any county under township organization is hereby authorized and empowered to donate to said company any amount, not to exceed thirty thousand dollars," etc.

"§ 10. No such election for the purpose of submitting the question of making a donation by any such town authorized by section nine of this act to donate to this company shall be held until the directors of said company shall have filed a proposition to the inhabitants of said town with the county clerk of the county wherein such town is situate, and a copy of the same with the clerk of said town, and if there be a newspaper published in such county, said proposition shall be published in full in the same, whereupon it shall be the duty of the clerk of such town to post up written or printed notices of the time and place of holding such election in at least ten public places in such town, together with a copy of said proposition, at least twenty days before the day for holding each election; at which election the legal voters of such township shall vote for or against such proposition; and if a majority of all the votes cast be for such proposition *the trustees of said town* shall so certify the same to the clerk of the county court of the county wherein the town is situated, and such county clerk shall, upon the application of the company, after the donation so voted by any such town shall have become due or payable under the terms and conditions of the proposition upon which said election was ordered, compute and assess upon all the taxable property in said town an amount sufficient to pay such donation, or any part or installment of the same so then being due and payable; which taxes so assessed shall be collected as other taxes; and the taxes so collected shall be paid to the treasurer of said company. And the election herein provided for shall be held, canvassed and returned as other regular town elections."

2 Private Laws of Ill. of 1867, p. 753.

As will be observed, the statute provided that the *trustees of the town* should certify to the Clerk of the County Court, etc., while there are, in fact, no such officers in towns under township organization. The town clerk, who is the keeper of the town records, did make the certificate so required to be made by trustees.

The County Clerk refused to extend the tax upon the town clerk's certificate, upon the ground that he was not the officer authorized by this act to make such certificate for that purpose. The Springfield and Illinois Southeastern Railway Company (which succeeded to the rights of the Illinois Southeastern Railway Company, by consolidation), upon this state of facts, sought by mandamus to compel the County Clerk to extend the tax. In deciding the question thus presented the Supreme Court of Illinois say:

"The writ of mandamus is one of the extraordinary remedies provided by law, and should never be awarded unless the party applying for it shall show a clear right to have the thing sought by it done, and by the person or body sought to be coerced. In doubtful cases it should not be granted.

The People v. *Hatch*, 33 Ill., 9.

The People v. *The Mayor of Chicago*, 51 id., 17.

"The petitioner is bound, like a plaintiff in an ordinary case, to state a case *prima facie* good, and the question is, has it been done in this case? We think some of the objections taken by the demurrants must be sustained. It was certainly not the duty of the County Clerk to extend the tax on the property in Barnhill township, until there was legitimate evidence on file in his office that a vote had been taken in the town, authorizing the tax to be levied for the purposes demanded. The law under which the vote was taken provided the result of the election upon the proposition to make the donation should be certified by the "trustees of said town," to the county clerk in the county in which the town is situated, before he is authorized to extend the tax to pay the donation. The certificate required by law to be made by the 'trustees of said town,' has not and cannot be made, for the reasons there are no such officers in towns organized under the general township organization law. The allegation is, the result of the election in this case was certified by the town clerk of the town of Barnhill, who, it is alleged, was the proper officer to make such certificate. The answer is, the town clerk was not authorized, by the law under which the vote was taken, to certify the result, nor was it his duty by any general law to make any such certification. Being without authority of law, the certificate of the result of the election made by him was an absolute nullity. Hence it cannot be said there was any legitimate evidence in the County Clerk's office that an election had been held in Barnhill township on the 10th day of November, 1868, or at any other time, for the purpose of voting on a proposition to make a donation to the railway company. How could the County Clerk know that a majority of the votes cast at that election was in favor of the proposition submitted? The certificate of the town clerk was no evidence of that fact, and it is not claimed there was any other evidence on file when the petitioner made the demand on the County Clerk to extend the tax. This view of the law is not answered by the suggestion, the demurrer admits the allegation in the petition, that a majority of the votes cast at the election was in favor of the proposition submitted.

"That fact was not known to the county clerk officially, when the demand was made officially upon him to extend the tax. Hence he was not authorized to act. The right to do the act sought to be coerced must exist at the time the party is called upon to perform it. The writ, if awarded, could confer no new authority."

S. & Ill. S. E. Ry. Co. v. *Co. Clerk et al.*, 74 Ill., 31, 32.

If it was not the official duty of the county clerk to extend the tax under the statute, and upon the facts as presented in the case cited, it is very clear that it was not the duty of the respondent, as county clerk, to extend the tax in the present case.

The official duties of county clerks are prescribed in the statutes of the State. The State Court holds that the county clerk can only extend taxes in the cases specifically authorized by statute, and then only upon such certificates or evidence, as the statute specifically prescribes. The decisions of the Supreme Court of the State construing those statutes will be accepted as authority in this Court.

Leffingwell v. *Warren*, 2 Black 599.

The statutes of Illinois only authorized county clerks to extend taxes to raise money to pay municipal debts, in the cases, and upon the official certificates specifically pointed out in the statute. In this regard, the fact that such demands are reduced to judgment is immaterial.

As we shall show further on, the statutes of the State have prescribed the course to be pursued to secure the levy and extension of taxes to pay judgments against such towns; and no other mode of procedure is known to the law.

Rees v. *City of Watertown*, 19 Wall., 107, 117.

2. The answer of the respondent discloses an additional reason why he ought not extend the tax under § 13

of the act to incorporate the Chicago & Rock River Railroad Company.

It appears that instead of having the proper certificates made to the County Clerk under § 12 of that act, so as to authorize and enable that officer to extend the tax under the provision of the charter, the party to whom the bonds were issued elected to register the bonds in the office of the Auditor of Public Accounts of the State, under the law of April 16, 1869; and the answer shows that each of the bonds contains a recital to this effect:

This bond is issued "under a law of the State of Illinois, entitled, 'An act to fund and provide for the paying of the railroad debts of counties, townships, cities and towns, in force April 16th, 1869, and when this bond is registered in the State Auditor's office of the State of Illinois the interest and principal will be paid by the State Treasurer as provided by said last mentioned law."

Printed Record, p. 32.

This clearly shows that the parties to the bonds did not intend, or expect, that the taxes to pay the bonds, either for interest or principal, should be assessed and levied by virtue of the special provisions contained in the charter of the company; and fully accounts for the fact that no steps were taken to comply with § 12, and have certified to the county clerk the necessary facts to enable him to compute and extend the tax under § 13 of the charter. It would have been absurd to have had two levies of taxes made and in process of collection at the same time. The law was not so disregardful of the rights of the tax-payers, and comtemplated nothing of the kind. It gave the parties issuing and receiving the bonds the right to elect under which law they would have the taxes assessed and collected. The general law of April 16, 1869, was regarded as more favorable to the interests of both parties, and was therefore selected as the one under which they would act. It contains the following:

"§ 4. When the bonds of any county, township, city or town shall be so registered, the state auditor shall annually ascertain the amount of interest for the current year due and accrued and to accrue upon such bonds, and from the amount so ascertained he shall deduct the amount in the state treasury placed to the credit of such county, township, city or town, as herein provided and directed; and from the basis of the certificate of valuation of property heretofore provided to be transmitted to him, or, in case no such certificate shall be filed in his office, then upon the basis of the total assessment of such county, township, city or town, for the year next preceding, he shall estimate and determine the rate per centum on the valuation of property within such county, township, city or town, requisite to meet and satisfy the amount of interest unprovided for, together with the ordinary cost to the state of collection and disbursement of the same, to be estimated by the auditor and treasurer, and shall make and transmit to the county clerk of such county, or to the proper officer or authority whose duty it is or shall be to prepare the estimates and books for the collection of state taxes in such county, township, city or town, a certificate stating such estimated requisite per centum for such purpose, to be filed in his office; and the same per centum shall thereupon be deemed added to and a part of the per centum which is or may be levied or provided by law for purposes of state revenue, and shall be so treated by such clerk, officer or authority, in making such estimates and books for the collection of taxes; and the said tax shall be collected with the state revenue, and all laws relating to the state revenue shall apply thereto, except as herein otherwise provided.

"§ 5. The State shall be deemed the custodian only of the several taxes so collected and credited to such county, township, city or town, and shall not be deemed in any manner liable on account of any such bonds; but the tax and funds so collected shall be deemed pledged and appropriated to the payment of the interest and principal of the registered bonds herein provided for, until fully satisfied."

Rev. Stat. of Ill., Chap. 113, marginal § § 14, 15.

It will be observed that as respects such registered bonds the County Clerk is only authorized, by this law, to extend such rate per cent. of taxes upon the assessed value of the property as may be specified in the estimate certified to him by the State Auditor. He has no power to act until the Auditor of the State has made such estimates, and certified the same to him as required by the statute. The answer shows he has never failed to make the proper extension of taxes whenever such estimates have been made and transmitted to him by the State Auditor, and that he continued to make such extensions on the estimates certified to him by the State Auditor until those officers were respectively enjoined from so doing by the State Courts.

While this injunction stayed the collection of taxes to pay such interest under the general law of April 16, 1869, it certainly did not authorize the County Clerk to extend the taxes under the special provision contained in the charter, when its provisions had not been complied with and the necessary facts had not been certified to him for that purpose.

The County Clerk, as appears from the answer, was in fact enjoined from extending the taxes to raise money to pay either interest or principal of any of the bonds under any law whatsoever.

Assuming that the United States Courts, in a case of this character, will disregard such injunction and not permit it to defeat the collection of a tax to pay a judgment recovered in a Federal Court, yet the law of the State prescribing the duties of a county officer will not be disregarded. If the law of the State only authorizes the County Clerk to act when certain official certificates, designed to form the basis of his action, are placed before him, this Court will not, we think, compel him to act in the absence of such certificates, and in violation of his prescribed legal duty.

In other words, the fact that the mode of proceeding to collect taxes to pay interest on these bonds, for which the parties saw fit to make provision, has failed, will not authorize the County Clerk to extend the taxes under another law, with the provisions of which there has been no attempt at compliance.

III.

The County Clerk had no power under the laws of the State to extend taxes to pay the judgments in question, until the same had been audited by the Town Board and certified to him by the Town Clerk.

Upon the facts as they appear upon the petition and answer, the Town Clerk is the only officer in default. This is an attempt to compel the County Clerk to violate his duty and perform an act *not* authorized by law, because the Town Clerk has failed to perform a duty imposed upon him by the law. This will appear from a brief survey of the statutes of the State defining the respective duties of those officers, as regards the assessment and collection of taxes for such purposes.

Section 6, Article V., of what is known as the Township Organization Law of Illinois, is as follows:

"§ 6. In all suits or proceedings prosecuted by or against town officers, in their name of office, costs shall be recovered as in like cases between individuals. Judgments recovered against a town or against town officers, in actions prosecuted by or against them, in their name of office, *shall be a town charge*, and when collected shall be paid to the person or persons to whom the same shall have been adjudged."

Rev. Stat. of Ill., Chap. 139, marginal § 50.

Judgments recovered against a Town are by this section made a "town charge" within the meaning of the law, and are to be collected, like other town charges, under the statutes hereinafter recited.

Lower v. *United States ex rel.*, 91 U. S., 536.

Article XIII of the township organization law, contains the following:

"§ 1. In each town the supervisor, town clerk and justices of the peace of the town shall constitute a board of auditors; said board shall consist of no less than three persons, and each person shall cast but one vote."

"§ 3. Said board of auditors shall meet at the town clerk's office for the purpose of examining and auditing the town accounts, semi-annually, on the Tuesday next preceding the annual meeting of the county board, and on the Tuesday next preceding the annual town meeeting.

"§ 4. The board of auditors shall, at the same time and place as stated in section 3, examine the accounts of the supervisor, overseer of the poor (where the town sustains its own poor,) and the commissioners of highways of such town, for all moneys received and disbursed by them, and *shall also examine and audit all charges* and claims against their town, and the compensation of all town officers, except the compensation of supervisors for county services."

"§ 7. The board shall make a certificate, to be signed by a majority of the said board, specifying the nature of the claim or demand, and to whom the amount is allowed, and shall cause such certificate to be delivered to the town clerk of said town, to be by him kept on file for the inspection of any of the inhabitants of said town; *and the aggregate amount thereof shall be certified to the county clerk at the same time and in the same manner as other amounts required to be raised for town purposes,* which shall be levied and collected as other town taxes, except that in towns mentioned in section four (4) article 4 of this act, the amount shall be certified to the county board, who shall include the same in their estimate of town expenses."

"§ 9. The moneys necessary to defray *the town charges* of each town shall be levied on the taxable property in such town in the manner prescribed in the act for raising revenue and moneys for state and county purposes and expenses."

Rev. Stat. of Ill., Chap. 139, marginal §§ 118–126.

The following is contained in the revenue law of the State:

"§ 122. The proper authorities of towns, townships, districts and incorporated cities, towns and villages, collecting taxes under the provisions of this act, shall annually, on or before the second Tuesday in August, certify to the county clerk the several amounts which they severally require to be raised by taxation, anything in their respective charters, or in acts heretofore passed by the General Assembly of this State, to the contrary notwithstanding.

"§ 123. The county clerk shall, annually, make out for the use of collectors, in books to be furnished by the county, correct lists of taxable property as assessed and equalized."

"§ 127. The said clerks shall estimate and determine the rate per cent. upon the proper valuation of property in the respective towns, townships, districts and incorporated cities, towns and villages in their counties, that will produce, within the proper divisions of such counties, not less than the net amount of the several sums that shall be required by the county board, *or certified to them according to law.*

"§ 128. All State and county taxes shall be extended by the respective county clerks upon the property in their counties, upon the valuation produced by the equalization and assessment of property by the State Board of Equalization. Town, district, village, city and other taxes, shall also be extended against such assessed and equalized valuation of property within their respective jurisdictions. In the extension of taxes, the fraction of a cent shall be extended as one cent."

Rev. Stat. of Ill., Chap. 120, §§ 122–128.

From these provisions of the statute it appears that county clerks are only authorized to extend against the taxable property in towns or other municipalities, such taxes as "shall be required by the county board or *certified to them according to law.*"

The fact that judgments have been recovered against the town, and that such judgments have been audited by the town board and certified to the town clerk, does not authorize the county clerk to extend taxes to pay such judgments until the aggregate amount of taxes required in the town for that year has been certified to him by the town clerk. As we have seen, the statute makes it the duty of the town clerk to include the judgments which have been audited in his certificate to the county clerk of the total amount of taxes required to be extended. In other words, the county clerk is only authorized to act upon the certificate of the town clerk, who is required to make out and certify a statement of the total amount of taxes required in the town for all town purposes. He has no authority, and it is not his duty to act upon any other evidence than that specified in the law.

S. & S. E. Ry Co. v. *County Clerk*, 74 Ill., 27.

The relators should seek their remedy against the town clerk who appears to be in default, and not against the county clerk who appears to have performed every act in the premises authorized by law, and has in no respect failed in the discharge of his legal duty.

If, as claimed, relators find it difficult to reach the town clerk, and have thus been delayed in the enforcement of their judgments, this would not authorize the county clerk to dispense with the statute, and upon information obtained by him in some other mode than that prescribed in the law, make for himself the estimate of the aggregate amount of taxes required to be certified by the town clerk, and on that base his extension of taxes. The county clerk is not a judicial officer. He is not authorized to extend taxes whenever in his opinion it appears to be reasonable and just in order to raise funds to pay judgments recovered against a town.

He acts in a purely ministerial capacity, and makes his computations and extends the taxes upon certain prescribed data, which the law requires to be placed before him.

The Court cannot by mandamus add anything to his authority; and if he should obey the writ and extend the taxes when not authorized by law, their collection could not be legally enforced.

Under the constitution and laws of Illinois, real estate cannot be sold for taxes otherwise than in pursuance of a judgment against the lands obtained in the County Court. And such judgment cannot be obtained where it appears that the county clerk has extended the taxes without authority of law.

The mandamus would add nothing to the validity of the proceedings to assess the tax. Such validity depends wholly upon the laws of Illinois. And since the laws of

Illinois, as construed by the Supreme Court of the State, do not authorize the county clerks to extend taxes of this kind if not "certified to them according to law," it follows that when not so certified, such extension would necessarily be held invalid.

The county clerk ought not to be compelled by mandamus to violate the law prescribing his duties and extend taxes not authorized by its provisions. We submit, therefore, that the court below erred in sustaining the demurrer to the answer, and awarding a peremptory mandamus against the county clerk.

JAMES K. EDSALL,
JOHN B. HAWLEY,
Counsel for Plaintiff in Error.

108-543

OFFICE SUPREME COURT U.S.
FILED
MAR 24 1883
JAMES H. McKENNEY, Clerk.

IN THE

SUPREME COURT of the UNITED STATES.

OCTOBER TERM, A. D. 1882.

No. 263.

JAMES A. HAWLEY, COUNTY CLERK, ETC., *Plaintiff in Error*, vs. THE UNITED STATES, EX REL. FAIRBANKS ET AL., *Defendants in Error.*	Error to the Circuit Court of the United States, Northern District of Illinois.

Brief and Argument for Defendants in Error.

THOMAS S. McCLELLAND,
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1883.

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Brief and Argument for Defendants in Error.

POINTS AND AUTHORITIES.

I.

Several judgment creditors, no one of whom having a claim in the sum of $5,000, join in the original petition filed in this cause. Each claim constituted a separate cause of action. The writ of error, under the ruling in *The Town of Elgin* v. *Samuel Marshall et al.*, decided at this term of court, must be dismissed.

Rev. Stats. of the U. S., *§§ 691 and 692.*
Town of Elgin v. *Marshall*, Chicago Legal News for March 3, 1883.

II.

The plaintiff in error was authorized by express statute of the State of Illinois to levy an assessment upon all the taxable property in the town of Amboy, to pay the coupons in controversy in this case, and it was clearly his duty to do so, even before the same were merged into judgment. The language of the statute is clear, intelligible, and relieved of any conditions precedent, except that the bonds contemplated by the act " be executed and delivered."

Private Laws of Illinois, 1869, vol. 2, p. 968, sec. 13, of an act entitled " An act to incorporate the Chicago & Rock River Railroad Company," in force March 24, 1869. The act, by its terms, is made a public act.

The petition sets forth that the judgments, for the payment of which the relators seek to have plaintiff in error levy and extend a tax, were recovered upon coupons cut from bonds executed by the town of Amboy and delivered before the plaintiff in error was called upon to exercise his power under the act of March 24, 1869 (*Record, p. 2*).

The answer admits the facts (*Record, p. 31*).

Section 13 of the act of March 24, 1869, was part of the contract under which the bonds were issued.

Commissioners, etc. v. *Aspinwall*, 24 How. 376.

III.

The county clerk is the only officer, known to the laws of Illinois, having the power or authority to levy or extend taxes. For that purpose he is an officer of each town in his county, and is bound to extend upon the collector's warrants, in each town, sums sufficient to cover and pay all town charges duly and properly allowed by the board of town auditors.

Hurd's R. S. Ill. 1880, C. 120, §§ 122 to 128.

Under the township organization law of Illinois it is made the duty of the board of town auditors, consisting of the supervisor, town clerk and justices of the peace in each town, to audit and allow all claims against the town, and file certificates thereof with the town clerk, who is custodian of the town records. Under the same act it is provided that the respective amounts of these town charges shall be certified to the county clerk each year, to enable that officer to compute the tax necessary to be levied upon the taxable property to pay the debts.

Rev. Stat. of Ill., 1880, Chap. 139, §§ 118 to 120.

In this case the certificate was made out by the supervisor and justices of the peace, constituting the board of auditors, furnished to relators, and by them served upon the plaintiff in error. (*Record, p. 10.*)

The petition charges (*Record, p. 3*), and the answer does not deny, that the town clerk, the only remaining officer of the auditing board, and the custodian of the town records, in fraud of the rights of the relators, and in collusion with the inhabitats of the town, absconded and fled the State for the sole purpose of evading any process of court requiring him to act in the premises, and to defeat the ultimate collection of these coupons.

The notices, certified copies of proceedings, *the certificate of the town board of auditors*, copies of bonds and coupons, etc., shown on pages 6 to 28 of the record, and the letter of plaintiff in error, on pages 28 and 29 of the record, are conclusive that he had indisputable and confirmatory evidence that the time had arrived in which he should act under the thirteenth section of the act of March 24, 1869, above cited, and the general revenue law of the State. The answer concedes all that is here claimed, but asserts that the official notice to the county clerk should be conveyed through the medium of the town clerk, who was in default.

IV.

Holders of bonds issued by the town of Amboy, under the act of March 24, 1869, *supra*, are entitled to have taxes levied upon the property of that town to pay the same by either of three distinct statutory methods.

1st. Under section 13 of the act of March 24, 1869, the plaintiff in error was authorized to extend the taxes upon the collector's warrants of the town of Amboy, independent of any other authority.

2d. By the general law of April 16, 1869, found in Revised Statutes of 1880, chapter 113, section 14 (§ 4), on certificate from the State Auditor, it would become the duty of the plaintiff in error to make the same levies upon the taxable property in Amboy. This act is known as the " Funding Law."

3d. Through the machinery of the town auditing board it was competent for that board to audit any amounts due upon such bonds, whether before or after judgment recovered, and make the same a specific charge, and upon reasonable notice of which to the plaintiff in error, that officer was bound to extend the same on the town collector's books for Amboy, to enable the proper collecting officers to collect taxes for payment of the debt.

Rev. Stat., edition of 1880, chap. 120, secs. 122 to 128, and chap. 139, secs. 118 to 126, set out in full in respondent's argument, filed herein.

Neither method directly, or by implication, excludes the other. They are independent but co-existent remedies.

Lower et al. v. *U. S., ex rel.* 91 U. S. 538.
Morgan v. *Town Clerk*, 7 Wall. 610.
The Town of Red Rock v. *Henry*, No. 134 of the October Term, 1882.

The argument of counsel for plaintiff in error, to the effect that inasmuch as the bonds were registered in the office of the State Auditor, under the general law of April 16, 1869, relators' only recourse for the collection of their coupons was through the State Auditor, if not conclusively refuted by the statutes, that that is only one of three distinct remedies and cumulative to the other two above designated, the answer of respondent himself, when he alleges that the State Auditor was perpetually enjoined by the Circuit Court of Lee County from performing his duties in the premises, ought to estop him in this case. (Answer of Hawley, pages 32 and 33 of Record.)

It is true that the bondholders were not made parties to that proceeding for an injunction, nor was any defense made to the suit, and the relators are in no manner effected by it. Still they can waive the remedy afforded by the Funding act of April 16, 1869, and invoke the other remedies or either of them.

ARGUMENT.

May it Please the Court:

To save a multiplicity of suits, the defendants in error elected to join in an action against plaintiff in error, requiring him, as County Clerk of Lee County, Illinois, to extend upon the town collector's warrants of the town of Amboy, situated in his county, and against which defendants in error had recovered judgments, sums sufficient to pay the judgments so recovered.

The largest of these judgments is less than $4,000. They are distinct claims, and it is only by uniting two or more that a sum is made large enough to come within the act of Congress allowing appeals to this court. Therefore it would seem this court has no jurisdiction, and the writ of error should be dismissed.

Russell v. *Stansell*, 105 U. S. 303.
Town of Elgin v. *Marshall*, No. 803 October Term, 1882.

If, however, the court shall consider this objection as not well taken, I proceed to argue the case on its merits.

In this case, no question can possibly arise as to the validity of the coupons on which the judgments set out in the record were recovered. The judgments themselves are conclusive, and the instruments sued on therein could not be attacked in this supplemental proceeding.

This court has pronounced the bonds valid.

Brooklyn v. *Ætna Life Ins. Co.*, 99 U. S. 362.

No question can arise as to the form of action. In Illinois mandamus will lie in all cases where it affords an appropriate remedy for the enforcement of a legal right.

Rev. Stat. of Ill., Chap. 89, sec. 9, mandamus.
The People, etc. v. *Village of Crotty*, 93 Ill. 186.

Under the laws of Illinois the county clerk is the only officer authorized to extend the amounts necessary to be raised for State, county, city, town, and other purposes, upon the tax collector's warrants, and thus make such amounts liens on the property taxed.

When so extended, these warrants become the authority to the collector for collecting the taxes, and, if default is made in payment, they become the basis for a judgment in the proper court.

Counsel for plaintiff in error note the fact here set forth, and it is unnecessary to quote the statutes relating thereto.

The petition alleges that the judgments for the payment of which this suit is brought, were recovered on interest coupons, owned by relators, taken from bonds issued by the town of Amboy, in Lee Co. Ill., in aid of the Chicago & Rock River Railroad Company, under a special act of the Legislature of Illinois, in force March 24, 1869.

That the amounts of the several judgments had been audited by the town board of auditors, in pursuance of the statute. The petition alleges that the town clerk, who is custodian of the town records, and who, in practice, advises the county clerk each year of the amount necessary to be levied on the taxable property in the town to pay all demands against it for the current year, had failed and refused to certify these judgments, and to escape being compelled so to do had absconded and kept himself concealed so that process of court and notices could not be served upon him. That this action on the part of the town clerk was in collision with the other officers and the people of the town, and at its expense, the sole object being to defeat payment of the railroad debt of the town. In other words, that the inhabitants of Amboy were engaged in a conspiracy to defeat the collection of this character of debts against it.

The petition further charges, that under the act of incorporation of the Chicago & Rock River Railroad Company, being the same under which Amboy was authorized to issue bonds, it became obligatory on the county clerk, the respondent, after the execution and delivery of the bonds, to annually compute and assess upon the taxable property in Amboy, a sum sufficient to pay the interest on its bonded debt.

That the relators had served notices on the plaintiff in error, embodying certified copies of the judgments and so much of the pleadings as showed that the judgments were recovered on coupons cut from bonds of Amboy, issued under the act of March 24, 1869, with copies of the bonds and coupons themselves, also a certificate signed by the supervisor and justices of the peace, who constituted a valid board of auditors in the absence of the town clerk, that they had audited and allowed the judgments against the town, and with such notices, which were in writing, the relators attached a demand in writing that the plaintiff in error proceed to levy a tax on the property in Amboy sufficient to pay the judgments.

These notices, etc., are made a part of the petition, and the court will observe that the notices charge the county clerk that he had in his office certificates of the amount of such bonds, issued by Amboy, the rate of interest and number of each bond. (*Record, p. 9.*)

The record further shows, that plaintiff in error refused to extend the taxes so demanded of him, and in order that no question might be raised on this point, he placed his refusal in writing. (*Record, p. 28 and 29.*)

The answer of the respondent in the court below, admits the material allegations in the petition and exhibits filed therewith. He, however, sets up, on information and belief, that the 12th section of the act of March 24, 1869, had not been fully complied with, as to that part following the proviso. This section 12 defines the duties of the clerks of towns issuing bonds, requiring them, in the proviso, to file with the county clerk a certificate of the amount of bonds issued, rate of interest, and number of each bond, and immediately precedes section 13, which defines the duties of county clerks, under the act. The answer claims that a literal performance of the duties of the town clerk, as set out in section 12, following the proviso, is a condition precedent to any act of the county clerk, under section 13.

The following is the text of section 13:

> It shall be the duty of the county clerk of said county, annually, after the execution and delivery of such bond aforesaid, to compute and assess upon all the taxable property returned by the assessor of such city, town or township, a sum sufficient to pay the interest and costs of collection and disbursements upon all bonds so issued by the respective cities, towns or townships; which tax shall be extended upon the collector's books, as other taxes are, and, when collected, shall be paid to the treasurer of the county; and such city, town or township shall, when providing for the levying and collecting of other taxes, also assess upon the property of such city, town or township any rate, not exceeding three per cent. in any one year, upon the assessment, to provide a fund for the redemption of the principal and interest of such bonds as or when they become due—said taxes to be levied and collected as other taxes are; but no tax shall be computed, assessed or collected, or any interest paid, to be applied upon said bonds, unless such bonds have been executed and delivered.
>
> *Priv. Laws of 1869, vol. 2, p. 968, § 13.*

The court will observe, that there is not a word in section 13, which would, in any manner, make the duties of the county clerk, under that section, conditional upon the performance of the duties of the town clerk, fixed in section 12. On the contrary, it would seem that it was intended by the Legislature, that no such condition precedent should exist, by the care exercised in leaving out all words importing such a condition. That it was intended that the town clerk should file the certificate provided for in section 12, as a source of information to the county clerk, to enable that officer to correctly provide for levying and extending taxes to pay yearly maturing interest, we do not doubt, but we do deny, that notice given in this manner, excludes every other form of notice.

Section 13 contains an independent direction to the county clerk, relieved of any conditions, except that "such bonds have been executed and delivered," words not contained in section 12 at all.

It is a fact, and the answer does not deny it, that that part of section 12 preceding the provisory clause, had been strictly performed. As to that part following the proviso in section 12, the answer denies that it was ever complied with. Whether the town did or did not originally file with the county clerk the certificate provided for in section 12, following the proviso, is not in proof, but to these bondholders it can make no difference. Section 13, as a method for effecting the levying of taxes to pay interest and principal, is part of the contract under which the bonds were issued, and no delinquency on the part of any other officers can relieve the plaintiff in error from the fulfillment of his obligations in the matter. This doctrine was enunciated in *Commissioners, etc.*, v. *Aspinwall*, 24 How. 376.

The respondent concedes that the town board had audited and allowed the judgments. Indeed this could not be controverted, as the evidence of the facts was of record in his own county, and prior to the filing of the petition herein, and at the time he was notified to extend the taxes, a certificate of the judgments signed by the supervisor and justices of Amboy had been served upon him, showing that they had been allowed.

The respondent claims that this certificate should have been signed by the town clerk. As a member of the board, he certainly ought to have done so; but the certificate itself shows that that officer was not present, and the petition avers that he was fraudulently absent for the sole purpose of evading his duty. This averment the answer does not deny.

Section 124, chapter 139 of the Revised Statutes of 1874, quoted by counsel on page 20 of his brief, as section 7 of the act entitled "Township Organization," provides that after the town board of auditors shall have allowed claims against the town, and made a certificate thereof signed by a majority of the board, and filed the same with the town clerk for the inspection of the public, then that "the aggregate amount thereof shall be certified to the "county clerk," etc.

Section 122, chap. 120, Rev. Stat. of Ill., quoted on page 21 of brief filed by counsel for plaintiff in error, provides that the "proper authorities of towns," etc., "shall "annually, on or before the second Tuesday in August, "certify to the county clerk the several amounts which "they severally require to be raised by taxation," etc.

The manifest purport of the statutes, taken as a whole, is simply to the effect, that in order to make proper provisions for the collection of taxes to pay town debts by the county clerk, who is alone charged with that duty, that officer must have some reasonable notice of the amount required from the town authorities. Does the record show that such reasonable notice was furnished respondent before the petition in this cause was filed ?

The absurdity of this excuse, set up by plaintiff in error, to wit, that the certificate must come from the town clerk, becomes apparent when it is palpably shown that the town clerk is designedly kept beyond the limits of the State, by the people of the town themselves, in order that he may not be compelled to make the certificate.

That plaintiff in error had notice of the claims audited and allowed by the town board, through a certificate signed by all the officers of the board, except the town clerk, who had absconded, to wit : signed by the supervisor and the three justices of the peace, all higher in rank than the clerk, clearly appears in the record, page 10, and is confessed by him in his letter to counsel for relators, on page 28 of the record.

Can respondent deny, successfully, that the amount of town charges allowed against the town of Amboy was "*certified*" to him and by its "*proper authorities* ?"

The plaintiff in error is not, by this proceeding, asked to make "any estimates," as counsel infers, on page 23 of his brief and argument, nor is he asked to exercise any discretion or perform any judicial act. He is asked to simply exercise the duties of his office, and extend upon the tax books, on collector's warrants, of the town of Amboy, in his county, a sum sufficient to pay the judgments in controversy. *First*—Because, it being shown that those judgments were recovered on coupons issued by Amboy under the act of March 24, 1869, incorporating the railway company, he is authorized and directed by the 13th section of that act to make such extensions, and,

Second, Because such judgments had been made proper town charges or obligations by being audited and a certificate thereof served upon him, which complies with the law relating to that subject.

When the respondent in this case declined to perform the duties of his office upon no other grounds than those set out in his answer he merely subserved the interests of the people of Amboy, to the manifest prejudice of the owners of these bonds.

I deem it but right, however, to say, at this point, that while the town of Amboy has for ten years successfully evaded the payment of interest on its just debts, Mr. Hawley has evinced no desire to make himself a party to the misfeasence of the town; but, on the contrary, has expressed a willingness to afford every facility to relators in making up a case for the court, in order that it may be judicially determined, whether he is bound to make the assessments or extensions claimed by the relators, based on all the facts and circumstances as they appear in the record.

Without claiming for it authority of law, governing this court, I desire to quote a passage from the opinion of the learned judge who heard the cause, and awarded the peremptory writ in the court below.

The court said: "Apart from the obligations en-"joined upon the respondent by the 13th section of the "charter of March 24, 1869, I take it that his duties extend, "under the general revenue law of the State, to spreading "upon the tax collector's books of the towns in his

" county, all charges against such towns, when the same " shall have been allowed by the town authorities, whether " he obtain the information of such charges through the " clerks of those towns, or through any other legitimate " source. It would be too narrow a construction of the " law to hold that claims against one of these municipal " corporations shall be defeated and payment precluded, " simply because some one officer, whose official duty it " might be to certify such charges or claims to the county " clerk for extension on the tax collector's books of the " town, in open violation of his duty, fails and refuses so " to perform his duty.

" It is admitted, and the record discloses the fact, " that the obligations of this town are long past due; that " they have been merged into judgments; that the town " has audited such judgments, and that by reason of the " non-feasance of the town clerk the same have remained " unpaid, and no provision for taxation has yet been, or " is likely to be, made for the ultimate payment of the " relator's demands.

" It appears that the town officer, whose duty it is— " as claimed by the relator—to officially advise the county " clerk of the amounts of the several judgments of the " relators, in order to enable the latter officer to extend " the necessary taxes upon the tax books of Amboy, acting in collusion with the tax-payers of that town, keeps " himself beyond the reach of the process of this court, " whereby he might be required to exercise his official " functions, and unless another road is open to the relators, they will continue to be deprived of their money.

" The matter of the judgments being valid, subsisting " charges against this town, is of record in respondent's " county. The relators have brought to his knowledge,

" by conclusive evidence, the existence of these judgments, " and their recognition by the town, and that they are " legitimate town charges, therefore it would be promoting injustice to say that, in view of all these facts, he " can shield himself behind the subterfuge of want of " power, and base that want of power upon any supposed " delinquency of the town clerk. His duties are ministerial, and are not contingent upon the action or non " action of the town clerk."

The answer sets up, and counsel argues, that inasmuch as the bonds were registered in the office of the State Auditor, under the funding law of April 16, 1869, the bondholders waived the remedy specifically provided for them under the 13th section of the charter act of March 24, 1869, and the remedy afforded by the general township organization act, and that it became exclusively the duty of the State Auditor to compute the necessary yearly amounts to be raised to pay this interest, and to certify the same to the county clerk.

The answer also discloses the fact, that in a proceeding in chancery in the Lee County Circuit Court, wherein the Town of Amboy and two of its citizens and tax-payers were parties complainant, and the State Auditor and other officials, *but not the bondholders*, were parties defendant, a perpetual injunction was issued on October 14, 1874, restraining that officer from making such computation and certificate.

This is not the law. As aids to the collection of these bonds and coupons, three distinct remedies are provided by statute:

First.—Through the act of March 24, 1869, being the charter of the railroad.

Second.—Through the funding act of April 16, 1869; and

Third.—Through the machinery of the town auditing board.

Neither method directly, or by implication, excludes the other.

The full extent to which the act of April 16, 1869, could go, would be cumulative in its character, as a further security to the holders of railroad securities, or in aid of the holders of such securities not otherwise protected.

The 13th section of the act creating the Chicago and Rock River Railroad Company, is a special guarantee to the holders of the bonds issued under that act, that a way was provided for the levying and collection of taxes to pay interest and principal of such securities, relieved from the caprice of the town itself, through an agency, in a measure, removed from local influences. Purchasers of the bonds have the right to invoke the aid of this charter in all its parts, and, so far as they are concerned, the funding law should be held to be cumulative or optional with the bondholders as to whether they should call that law into requisition or not. Certainly, so far as the funding law of April 16, 1869, is concerned, this court has decided that that act is cumulative to the method of collecting town debts through the machinery of the town officers.

Lower et al. v. *U. S. ex rel.* 91 U. S. 538.

While, as a matter of law, the injunction against the State Auditor, procured in the Circuit Court of the county in which plaintiff in error is county clerk, cannot affect the holders of these bonds, who invoke the aid of the

Federal courts, and as to them is *nudum pactum*, still it would seem that it is hardly competent for the town of Amboy, which is the real beneficial respondent in this case, to set up that the State Auditor's office is the only avenue through which relators can gain any relief, when it has, by its own act, enjoined that officer from performing his duties.

The funding act of April 16, 1869, does not directly, nor by necessary implication, repeal the act of March 24, 1869, chartering the Chicago and Rock River Railroad Company, or any portion of it.

That the relators can invoke either or all the remedies provided for them by law, is announced in the opinion of this court in the case of

Morgan v. *Town Clerk*, 7 Wall. 610.

In that case the bonds were issued under a special law passed by the Legislature of Wisconsin in 1853. The act provided that the board of supervisors should levy the tax to pay interest, etc. In 1858 the same State passed a general law providing that town clerks make the necessary assessments for the same purpose. Default having been made in payment of the bonds, Morgan, the owner of some, recovered a judgment on the same and filed his petition for mandamus against the board of supervisors. Failing to effect his purpose, owing to each successively elected board resigning, he asked for the writ against the town clerk under the general act of 1858, and this court held that the action could be maintained under both or either of the acts. The question here under consideration was before this court in case of *The Town of Red Rock* v. *Henry*, at the present term.

The plaintiff in error cannot in any manner be affected by being required to extend these taxes. Indeed, he has no interest in the action. The tax-payers of Amboy are the only persons anxious to defeat this action. They are chargeable with the act of electing a town clerk from year to year, and fraudulently keeping him beyond the limits of the State and the jurisdiction of the Circuit Court. It is one of a long line of disreputable expediencies resorted to by municipal corporations to avoid payment of their debts.

Counsel for plaintiff in error quotes from the case of *S. & Ill. S. E. Ry. Co.* v. *County Clerk*, 74 Ill. 31–32, and seems to rely upon it as conclusive in this case. I am at a loss to perceive how this can be so. In that case it would appear from the statute that the "trustees" of the town should certify the vote to the county clerk as a *condition precedent* to that officer, computing and assessing a sum sufficient to pay the donation voted by the town. As a matter of fact, there are not known to the laws of Illinois any such officers as "trustees" of towns, under township organization, and in the case before the Illinois court the town clerk had assumed to make the certificate. The court said that the county clerk was not bound to take notice of the unauthorized act of the town clerk; but the court further clearly announces that if *legitimate evidence* "had been produced, the county clerk would have been bound to act;" and the court did not limit such "*legitimate evidence*" to the certificate of the "trustees of the town."

The question is not one of the construction of a State statute or Constitution, wherein this court, under certain contingencies, would be governed by any rulings of the State court. What I claim is, that the plaintiff in error had before him proper evidence to warrant him in extending the taxes in this case, both under the charter of the railway company and under the general revenue and township organization laws of Illinois; that his duty in the premises was clouded by no doubt, and that he should have performed his duty.

THOMAS S. McCLELLAND,
Of Counsel for Defts. in Error.

GEO. A. SANDERS,
Attorney for Fairbanks.

T. C. MATHER,
Attorney for Skinner, Thomas and Wetmore.

108-543

OFFICE SUPREME COURT U.S.
FILED
APR 16 1883
JAMES H. McKENNEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A.D. 1882

No. 263.

JAMES A. HAWLEY, COUNTY CLERK,
Plaintiff in Error,
v.
U. S. EX REL., J. H. FAIRBANKS, ET AL.,
Defendant in Error.

ERROR TO CIRCUIT COURT, U. S., NORTHERN DISTRICT OF ILLINOIS.

BRIEF IN REPLY FOR PLAINTIFF IN ERROR.

JAMES K. EDSALL & JOHN B. HAWLEY,
COUNSEL FOR PLAINTIFF IN ERROR.

CHICAGO:
THORP, WEST & CO., LEGAL PRINTERS, 111 MADISON STREET.
1883

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BRIEF IN REPLY FOR PLAINTIFF IN ERROR.

I.

As to the question of Jurisdiction.

Jurisdiction is denied by counsel for defendant in error upon the ground that no one of the judgments owned by the several relators exceeds $5,000. The aggregate amount of said judgments, however, exceeds $10,000.

An examination of the record, and due consideration of the nature of the act sought to be coerced by mandamus, will show that the objection to jurisdiction is not well taken.

1. The scope and purpose of the proceeding was to compel the defendant below, as County Clerk, to extend a tax sufficient to raise an aggregate sum exceeding $10,000,

out of which, when collected, as a common fund, the several relators would be entitled to have their respective judgments paid by the County Treasurer, or other custodian of the fund. In no event would the County Clerk have anything to do with such payment or distribution.

It is claimed by counsel for defendant in error that § 13 of the act to incorporate the Chicago and Rock River Railroad Company made it the duty of the County Clerk to extend the tax; and the record shows that the Circuit Court so held. (Printed Record, p. 37.)

That section is quoted on page 10 of the Brief for plaintiff in error. A reference thereto will show that the only authority thereby conferred upon the County Clerk was "to compute and assess upon all the taxable property returned by the assessor of such city, town or township, *a sum* sufficient to pay the interest and costs of collection and disbursements *upon all the bonds* so issued," etc. Assuming for the present purpose that proper steps had been taken to make it the duty of the County Clerk to extend the tax under that section, the duty was to extend one tax each year sufficient in amount to pay the interest, etc., on *all* the bonds. The County Clerk was not authorized to extend a separate tax to raise funds to pay the amount of interest due each individual holder of the bonds or coupons, severally. So far as the County Clerk or his official duty was concerned, it was a matter of indifference to him whether one person owned all the bonds or whether each bond was owned by a different person. In either event his duty was the same in respect to the extension of the taxes. So far as he owed any duty under the law, it was not *several* as to each bondholder, but *joint* as to all the bondholders.

The same is equally true, should it be held that the

County Clerk was required to extend the tax under the general laws of the State, set out on pages 20 to 22 of brief for plaintiff in error. The aggregate amount of all town charges audited by the town board each year is required to be certified to the County Clerk, and the statute makes it his duty to extend a tax for a sufficient amount to raise the sum so certified to him. He is not authorized to extend a separate tax to pay each creditor of the town. In this regard, judgment creditors stand upon the same footing as other creditors. The law does not authorize a separate tax to pay such judgments; but when they are properly audited and certified to the County Clerk as a part of the aggregate amount of taxes required to be levied in the town, the statute simply makes it the duty of the County Clerk to extend a tax sufficient to raise such aggregate sum. He owes no duty to the creditors of the town, severally, as individuals. He has no official knowledge as to who they are. So far as he owes any duty to such creditors, it is to the whole body of them *jointly*, whose claims have been properly audited and certified to him. This must have been the view entertained by the relators when they joined in the same petition for mandamus, and it was sustained by the Circuit Court, by granting the writ, in accordance with the prayer of the petition.

The object of the proceeding was to raise a common fund, out of which these several judgment creditors could be paid. The County Clerk had no duties to perform in the distribution of that fund.

This case is therefore governed by the principle recognized and established in the case of *Shields* v. *Thomas*, 17 How., 3. It was there held that a decree that the respondent, as administrator, was accountable to the representatives of the deceased for $2,000, may be appealed from *by him*, though the same decree apportions the amount among the complainants; and the distributive share of each is less than $2,000, the amount then required to confer jurisdiction. In that case the authorities are carefully reviewed, and as will appear from the opinion, the decision rested upon the controlling fact that the controversy introduced in the suit was respecting a common fund, in the distribution of which the administrator had no interest. As to him, the amount of the entire fund was involved.

So here, if the County Clerk rests under a legal obligation to extend any such tax, it his duty to extend a tax for a sufficient amount to raise a common fund large enough to pay all the judgments, and not a separate tax to pay each judgment creditor. The authorities cited by counsel for defendant in error are, therefore, inapplicable.

2. The United States was the legal party plaintiff on the record, in whose name the proceeding was carried on, for the use and benefit of the relators, on whose petition the suit was instituted. It was an action at law, and must be treated as one action. The amount in controversy, so far as the defendant in the court below is affected thereby, was the entire amount of the tax he was required to extend.

He is no more affected by the distribution of the tax, when collected, among the several relators, than is a defendant in an action of assumpsit, brought in the name of A as plaintiff in the record, for the expressed use of B and C, severally. In such a case jurisdiction would undoubtedly depend upon the entire amount of the judgment; and it would not be defeated though it might appear that the several interest of B or C was less than $5,000.

II.

As to the merits.

There are certain other points in the brief and argument of counsel for defendant in error, in respect to which we desire to submit a brief reply.

1. It is said that the answer does not deny the averments of the petition to the effect that the town clerk, in collusion with the inhabitants of the town, absconded and fled the State, for the sole purpose of evading the process of the court, and so that he could not certify the action of the board of auditors to the County Clerk. (Printed Record, p. 3.)

This is stated in the petition as the reason why the certificate was not made as required by the statute. *Ib.*

The answer does not admit this averment of the petition. On the contrary the answer says that, " as to all and singular, the averments in said petition contained and not herein expressly admitted, this respondent denies the same in manner and form as alleged in said petition." *Ib.* pp. 32, 33.

2. It is said that *the certificate of the town board of auditors*, allowing these judgments, was filed with the County Clerk. This is incorrect. The petition shows that the action of the town board was not certified to the County Clerk, because of the absence and failure of duty on the part of the town clerk. It does not appear that the action of the town board was in any manner certified to the County Clerk. A paper, "Exhibit B," appears in the printed record at page 10, purporting to be a copy of the certificate of the board of town auditors, auditing and allowing to J.

H. Fairbanks the amount of his judgment, $2,540, including interest and costs.

This paper is not even mentioned in the petition; nor is it made part thereof by reference. The only exhibit mentioned in the petition, referring to the Fairbanks judgment, is Exhibit A, which embodies copies of the bonds and interest coupons, and the judgment obtained thereon, and a copy of the notice to the County Clerk, in that case. (Printed Record, pp. 4, 6, 7, 8 and 9).

On page 10 of the printed record there appears a paper marked "Exhibit B"; but there is nothing in the record to show that either the original or a copy of that paper was ever filed with the County Clerk. The presumption is that the original of that paper remains on file in the office of the town clerk, where, under the statute, it properly belongs. The statute requires that the certificate of the board of auditors allowing the claims, shall "be delivered to the town clerk of said town, to be by him kept on file for the inspection of any of the inhabitants of said town, and the *aggregate amount* thereof shall be certified to the County Clerk," etc. Brief for plaintiff in error, § 7, p. 21.

And as appears from the statute quoted *post* page 8, the town clerk is the only officer authorized to certify such aggregate amount to the county clerk.

The law does not authorize either the original or a copy of the paper signed by the board of auditors, allowing a particular claim, to be filed with the County Clerk. He is only authorized to act upon a certificate made to him by the town clerk, stating the "aggregate amount" of all the claims allowed and taxes required. He has nothing to do with the action of the town board in respect to one particular claim. If such a paper was filed with him, he could not officially know that it was not included in the "aggregate amount" certified to him by the town clerk in legal form, as such certificate of the aggregate amount is not required to, and does not, enumerate the items of which the aggregate is made up.

In respect to the three other judgments, there is no paper appearing anywhere in the record corresponding with "Exhibit B" as it appears on page 10 of the printed record. There is another "Exhibit B" relating exclusively to the Skinner judgment, appearing on pages 11 to 15 of the printed record. This is the only "Exhibit B" referred to in the body of the petition. (Printed Record, p. 4.)

Exhibits C and D relate respectively to the Thomas and Wetmore judgments; and neither of them contains anything in reference to the action of the town board thereon. The claim of counsel that the action of the board of town auditors in respect to these judgments was in any proper manner certified to the County Clerk, is not sustained by the record.

3. It is said by counsel for defendant in error that there is not a word in § 13 of the charter of the railroad company making a compliance with § 12, a condition precedent to the extension of taxes by the County Clerk under § 13. It is true the words "condition precedent" are not used. The plain meaning of the two sections is that the official information contained in the certificates required by § 12 should form the basis and authority for the extension of taxes under § 13, so that the County Clerk could not lawfully act under that section until such certificates had been filed in his office. In the case of *S. & I. S. E. R. R. Co.* v. *County Clerk*, 74 Ill., 27, cited in brief for plaintiff in error, at pages 12 to 14, there was nothing in the statute

which in terms made the certificate of the "trustees of the town" a condition precedent to the extension of the taxes by the County Clerk; nevertheless the Supreme Court of Illinois held that the County Clerk could not lawfully act without such certificate. Sections 4 and 6 of Article XII. of the Township Organization law of Illinois, prescribing the duties of the town clerk, are as follows:

> "§ 4. He shall, annually at the time required by law, certify to the County Clerk the amount of taxes required to be raised for all town purposes."
>
> "§ 6. Copies of all papers, duly filed in the office of the town clerk, and transcripts from the town records certified by him, shall be evidence in all courts with like effect as if the originals were produced."

Rev. Stat. Ill., Chap. 139, Marg. Secs. 115 and 117.

Notwithstanding these provisions make "transcripts from the town records certified by" the town clerk "evidence in all courts with like effect as if the originals were produced," and also make it the duty of the town clerk to "certify to the County Clerk the amount of taxes required to be raised for all town purposes," yet the Supreme Court of Illinois held that the certificate of the town clerk could not be substituted for the certificate of the "trustees of said town" mentioned in § 10 of the act to incorporate the Illinois Southeastern Railway Company referred to in the case of *S. & I. S. Ry. Co.* v. *Covnty Clerk*, 74 Ill., 27, and quoted on page 12 of brief for plaintiff in error.

4. It is claimed that the relators are entitled to three distinct remedies for the collection of their bonds and coupons, and that neither is exclusive of the other, viz:

1st. Under the provisions of the charter of the railroad company.

2d. Under the Funding and Registry act of April 16, 1869, and

3d. By suit and recovery of judgment, and thus "through the machinery of the town board."

We do not deny that the holders of the bonds originally had the right to take such proceedings as would enable them to collect their bonds and coupons in either of the three modes thus indicated. What we claim is that in order to pursue either remedy they must comply with the statute in relation to that remedy; and that inasmuch as no attempt at compliance with § 12 of the charter was made, they cannot now compel the County Clerk to extend the taxes under § 13. And so, also, as to proceedings to have the taxes extended through "the machinery of the town board." To make that proceeding effectual, the statute in that behalf must be complied with, and the amounts audited by that board must be certified by the town clerk to the County Clerk, as a part of the aggregate of the town charges so audited. We have shown in our brief that neither was done. The multiplicity of remedies provided by the statute cannot avail the relators, unless they take such action as to make it the duty of the County Clerk to extend the taxes in some one of the various modes prescribed in the statute.

JAMES K. EDSALL,
JOHN B. HAWLEY,
COUNSEL FOR PLAINTIFF IN ERROR.

108-552

SUPREME COURT U.S.
MAR 19 1883
McKENNEY

No. 11-Orig'l

IN THE

SUPREME COURT

OF THE

United States of America.

* * *

In the Matter of the Application of HUNG HANG for a Writ of Habeas Corpus.

PETITION.

HALL McALLISTER,
Counsel for Petitioner.

IN THE SUPREME COURT

OF THE

United States of America.

IN THE MATTER OF THE APPLICATION OF HUNG HANG FOR A WRIT OF HABEAS CORPUS.

To the Honorable the Supreme Court of the United States of America :

The petition of Hung Hang respectfully shows that he is now in custody and unlawfully imprisoned and restrained of his liberty, in contravention of the Constitution of the United States, and of that certain treaty entered into between the Emperor of China and the Government of the United States, of February 5th, A. D. 1870, commonly known and called the Burlingame Treaty (16 U. S. Statues at large, page 740), which unlawful restraint and imprisonment consist in this :

That on or about the 21st day of October, 1882, the Board of Supervisors of the City and

County of San Francisco, a municipal corporation organized and acting under that certain Act of the Legislature of the State of California, entitled, "An Act to repeal the several Charters of "the City of San Francisco, to establish the "boundaries of the City and County of San "Francisco, and to consolidate the government "thereof," approved April 19th, 1856, and the several Acts of the Legislature of the said State of California, amendatory thereof, and supplementary thereto did pass a certain order known and designated as "Order No. 1691, Regulating "the licensing, establishment and maintenance of "public laundries and public wash-houses within "certain limits in the City and County of San "Francisco," in the words and figures following, that is to say:

ORDINANCE.

The People of the City and County of San Francisco do ordain as follows:

SECTION 1. On and after the first day of January, 1883, it shall be unlawful for any person or persons to establish, maintain or carry on the business of a public laundry, or a public wash-house, where clothes or other articles are cleansed for hire, within that portion of the City and County of San Francisco lying and being within the following boundaries: commencing at the intersection of Gough street with the waters of the bay of San Francisco; thence following the bay shore easterly and southerly to the easterly end of Channel street; thence along Channel street in a westerly direction to Ninth street; thence northwesterly along Ninth street to Market street; thence southwesterly along Market street to Gough street, and thence northerly along Gough street to the point of commencement, without having first obtained a license or permit therefor, duly granted by resolution of the Board of Supervisors.

SECTION 2. On and after the first day of January, 1883, the license collector of the City and County of San Francisco shall not issue a license to any person or persons proposing to carry on the business named in Section 1 of this order, in that portion of the city lying and being within the boundaries, as described in said Section 1 of this order, until he, she or they have obtained a certified copy of the resolution, as provided in Section 1 of this order.

SECTION 3. Before any license or permit shall be granted for carrying on the business named in Section 1 in this order, there must be filed with the Board of Supervisors an accurate description and location of the premises for which the license is applied; also a certificate, signed by the Health Officer of the City and County of San Francisco, that said premises are properly and sufficiently drained, and that all proper arrangements for carrying on the business without injury to the sanitary condition of the neighborhood, have been complied with, and particularly that the provisions of Section 4, of Order No. 1666 of this Board, have been complied with. Also a certificate signed by the Board of Fire Wardens of the City and County of San Francisco, that the stoves, washing and drying apparatus, and the appliances for heating smoothing irons are in good condition, and that their use is not dangerous to the surrounding property from fire, and that all proper precautions have been taken to comply with the provisions of Order No. 1617, defining "the "fire limits of the City and County of San Francisco, and "making regulations concerning the erection and use of "buildings in said City and County," and Order 1670, "prohibiting the kindling, maintenance and use of open "fires in houses."

SECTION 4. It shall be the duty of the Health Officer, and also of the Board of Fire Wardens, respectively, upon the application of any person or persons proposing to open or conduct the business of public laundry, within the portion of said City and County designated and described in Section 1 of this order, to inspect the premises in which it is proposed to carry on said business, or in which said business is being carried on, with a view of ascertaining whether said premises are provided with proper drainage and sanitary appliances, also, whether the provisions of Orders No. 1617 and 1670 of this Board have been complied with, and if found in all respects satisfactory, then to issue to said applicants the certificate provided for in Section 1 of this order. No charge whatever shall be made, or compensation or fee collected, or received for the performance of any of the services required by the provisions of this order, in the inspection of the premises and the issuance of certificates, but all such services shall be performed free of charge.

SECTION 5. No person or persons owning or employed in the public laundries or public wash-houses provided for in Section 1 of this order, shall wash or iron clothes between the hours of 10 o'clock P. M. and 6 o'clock A. M., nor upon any portion of that day known as Sunday.

SECTION 6. No person or persons engaged in the laundry business, within that portion of this city described in Section 1 of this order, shall permit any person suffering from any infectious or contagious disease to lodge, sleep or remain within or upon the premises used by him, her or them for the purpose of a public laundry.

SECTION 7. Any person or persons using, maintaining or carrying on the business of a public laundry or a public wash-house, where clothes or other articles are cleansed for hire, within the limits of this city and county, as described in Section 1 of this order, without first having obtained permission from the Board of Supervisors, and a license from the License Collector, provided for in Sub-division XX, of Section 10, of Order No. 1589 of this Board, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $1000, or by imprisonment of not more than six months, or by both, and any person who shall violate the provisions of Section 5 or 6 of this order shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $5, nor more than $50, or by imprisonment for not more than one month, or by both such fine or imprisonment.

Which ordinance went into effect on the first day of January, 1883. That petitioner is a native of China, and during all the times herein stated was and still is a subject of the Emperor thereof.

That petitioner for ten years last past has been, and still is, engaged in carrying on the business of a public laundry within that portion of said City and County lying and being within the following boundaries: "Commencing at the intersection "of Gough street, with the waters of the "Bay of San Francisco; thence following "the bay shore easterly and southerly to the "easterly end of Channel street; thence along "Channel street in a westerly direction to Ninth "St.; thence northwesterly along Ninth street "to Market street; thence southwesterly along "Market street to Gough street, and thence "northerly along Gough street to the point of "commencement," being the same portion of said City and County particularly designated in said Or-,

diance as that portion of the City and County of San Francisco lying and being within the following boundaries: "Commencing at the intersec-
" tion of Gough street with the waters of the Bay
" of San Francisco; thence following the bay
" shore easterly and southerly to the easterly end
" of Channel street; thence along Channel street,
" in a westerly direction to Ninth street; thence
" northwesterly along Ninth street to Market
" street; thence southwesterly along Market
" street to Gough street, and thence northerly
" along Gough street to the point of commence-
" ment."

That during the time petitioner carried on said business of a public laundry in said City and County, he has, in all respects, complied with the laws of the United States, of the State of California, and the ordinances of the City and County of San Francisco, except as hereinafter stated, and he has, in all respects, complied with the provisions of order No. 1589 of the Board of Supervisors.

Petitioner further shows, that the business of carrying on a laundry is a lawful business, wherein a large number of the subjects of the Emperor of China have been, and are, engaged in the said City and County of San Francisco, and the majority of the subjects of the said Emperor of China carrying on said business in the said City and County of San Francisco, carry on the same within the limits of that portion thereof hereinbefore particularly described; that is to say, according to the information and belief of petitioner, there are about two hundred laundries within that portion of said City and County of San Francisco lying and being within the following boundaries: Commencing at the intersection of Gough street with the waters of the Bay of San Francisco; thence following the bay shore easterly and southerly to the easterly end of Channel street; thence along Channel street, in a westerly direction, to Ninth street; thence northwesterly along Ninth street to Market street; thence southwesterly along Market street to Gough street, and thence northerly along Gough street to the point of commencement; and there are only about seventy-five carried on in said City and County without said particularly described portion of said City and County of San Francisco.

That there is now, and has been for several years last past, great antipathy and hatred on the part of the residents of said City and County of San Francisco, and the citizens and taxpayers thereof against the subjects of the Emperor of China residing and doing business in said City and County of San Francisco.

That such antipathy and hatred has manifested itself in various ways and under various forms, for the purpose and with the intent of expelling and compelling the subjects of said Emperor of China to quit and abandon doing business or remaining in said City and County of San Francisco, or in the State of California, or in the United States of America.

That for the purpose herein last stated, there is organized a league of persons, in said City and County of San Francisco, commonly known and called the "League of Deliverance," consisting, as petitioner is informed and believes, of about five thousand people, the object and purpose of which league is by all ways and means to force the subjects of the said Emperor of China to leave said City and County of San Francisco, and leave the State of California, and leave the United States of America; and by all ways and means to prevent said subjects of the Emperor of China from carrying on and pursuing their respective vocations or earning a living by the exercise of the same within the City and County of San Francisco, or within the State of California, or within the United States of America.

That by and through such antipathy and hatred against the subjects of said Emperor of China, in said State of California, said persons so hostile to said subjects of said Emperor of China did cause and procure to be passed through the Legislature of the State of California a certain Act, entitled "An Act concerning lodging-houses and "sleeping apartments within the limits of incor-"porated cities," approved April 3d, 1876 (Statute 1875-6, page 759), wherein and whereby it is provided that:

"SECTION 1. Every person who owns, lets, or hires "to any person or persons any room or apartment in "any building, house or other structure within the lim-"its of any incorporated city, or city and county within "the State of California, for the purpose of lodging or "sleeping apartments, which room or apartment contains "less than five hundred cubic feet of space in the clear for "each person occupying such room or apartment, shall be

" deemed guilty of a misdemeanor, and shall upon convic-
" tion thereof be punished by a fine of not less than fifty
" dollars, or more than five hundred dollars, or by im-
" pisonment in the county jail, or by both such fine and
" imprisonment.

" SECTION 2. Any person or persons found sleeping
" in or lodging in any room or apartment which contains
" less than five hundred cubic feet of space in the clear, for
" each person so occupying such room or apartment, shall
" be deemed guilty of a misdemeanor, and shall upon con-
" viction be punished by a fine of not less than $10 or
" more than $50, or by both such fine and imprisonment.

" SECTION 3. It shall be the duty of the Chief of Po-
" lice (or such other person, to whom the police powers
" of the city are delegated), to detail competent and qual-
" ified officers of the regular force, to examine into any
" violations of the provisions of this Act, and to arrest any
" person guilty of any such violation."

which said last mentioned Act of the Legislature was enacted for the purpose and with the intent of annoying and harassing said subjects of the Emperor of China in the State of California.

That under the provisions thereof the houses and dwellings of the said subjects of the Emperor of China within the City and County of San Francisco have been invaded without warrant, and the doors thereof frequently broken into at all hours in the night for the alleged purpose of ascertaining any infraction thereof.

That under the provisions of said Act of the Legislature about

number of thousands of subjects of the said Emperor of China has been arrested, and no other person or persons than the subjects of said Emperor of China have been arrested or prosecuted in the said City and County of San Francisco.

That with the intent and for the purpose of annoying and harassing the said subjects of the Emperor of China within the said City and County of San Francisco, said persons, hostile to the subjects of the Emperor of China as aforesaid, have caused, and knowingly and intentionally, and for the purpose of annoying and harassing said subjects of the Emperor of China, who were employed at work in the said City and County of San Francisco, to be arrested for pretended violation of said law at the time when they must either submit to putting up ten or twenty dollars as a bail, and forfeiting the same, or lose their employment.

That said "League of Deliverance," as well as the other persons inimical to the said subjects of the Emperor of China, do and have, in all ways and by all means, discouraged and prevented people from employing said subjects of the Emperor of China in the said City and County of San Francisco, and have, by threats and intimidation, frequently succeeded in so doing.

That owing to the aforesaid feeling of antipathy and hatred prevailing against the said subjects of the Emperor of China, and not otherwise, and not for any sanitary, police or other legitimate purpose, but for the purpose and with the intention of forcing the said subjects of the Emperor of China engaged in carrying on the business of a laundry in the said City and County of

San Francisco, to abandon exercise of their lawful vocation, and their only means of earning a livelihood, the said Board of Supervisors did enact and pass the ordinance hereinabove first set forth.

That said Board of Supervisors at the time of the passage of said ordinance well knew that the great bulk of the subjects of said Emperor of China engaged in carrying on the business of laundry within the said City and County of San Francisco, were situate within that portion of the limits thereof in said ordinance particularly specified, and that exclusion therefrom was and would be, practically, exclusion from said City and County of San Francisco.

That said ordinance was enacted, framed and adopted not from any legitimate police regulation or sanitary purpose, but for the purpose and with the intent of excluding said subjects of the Emperor of China from carrying on or conducting said business of a laundry within the aforesaid portion of the said City and County of San Francisco.

That petitioner has been and is earning his living exclusively by carrying on and conducting the business of a laundry, as hereinbefore stated, and has no other lawful vocation or pursuit to earn his living except such business.

That petitioner is ready and willing to pay the license fees provided by the ordinance of said Board of Superuisors, and to pay all the lawful taxes, charges, licenses or assessments required by the laws of the State of California, or the laws of the United States, in order to carry on and conduct said business of a laundry, as hereinbefore stated.

That said Board of Supervisors will not grant, nor will any of the officers in said Ordinance specified grant to your petitioner, any of the authorizations mentioned in said Ordinance hereinbefore past mentioned.

That while so unable to purcure the authorizations mentioned as required in and by the provisions of said Ordinance hereinbefore first recited, and while petitioner was lawfully carrying on and conducting said business of a laundry in said City and County of San Francisco, as aforesaid, on the 1st day of March, A. D. 1883, James Galbraith did file a complaint in writing, in the Police Judge's Court of the said City and County of San Francisco, which, omitting the caption thereof, was in the words and figures following, that is to say :

" Personally appears before me, this first day of March,
" A. D. 1883, James Galbraith, who, on oath, makes com-
" plaint, and deposes and says, that on the 28th day of
" February, A. D. 1883, in the City and County of San
" Francisco, State of California, the crime of misde-
" meanor was committed, to-wit : by Hung Hang (whose
" real name is unknown to this complainant), who then and
" there, at No. 412 O'Farrell street, between Taylor and
" Jones streets, did willfully and unlawfully establish,
" maintain and carry on the business of a public laundry
" and a public wash-house, where clothes and other ar-
" ticles were then and there cleansed for hire, within that
" portion of the City and County of San Francisco, lying
" and being within the following boundaries : Commenc-

" ing at the intersection of Gough street with the waters
" of the Bay of San Francisco; thence following the bay
" shore easterly and southerly to the easterly end of
" Channel street ; thence along Channel street, in a west-
" erly direction, to Ninth street ; thence northwesterly
" along Ninth street to Market street ; thence southwest-
" erly along Market street to Gough street, and thence
" northerly along Gough street to the point of com-
" mencement, and he, the said Hung Hang, did then and
" there, at the place aforesaid, establish, maintain and
" carry on said business of a public laundry and a public
" wash-house, where clothes and other articles were then
" and there cleansed for hire, within the boundaries afore-
" said, without having first obtained a license or permit
" therefor, duly granted by resolution of the Board of
" Supervisors, of said City and County of San Francisco.
" Thereby violating the provisions of Section 1, Order
" No. 1691 of the Board of Supervisors of said City and
" County of San Francisco, contrary to the form, force
" and effect of the statute in such cases made and pro-
" vided, and against the peace and dignity of the people
" of the State of California, and this complainant upon
" oath accuses the said Hung Hang of having committed
" the said crime, and this complainant further alleges and
" deposes, that the said accused was then and there ar-
" rested therefor in the actual commission of said offense,
" and prays that the said accused may be brought before
" a magistrate and dealt with according to law.

"JAMES GALBRAITH.

" Res. or place of Bus., 1109 Folsom street."

" Subscribed and sworn to before me the 1st day of
" March, 1883.

" H. WATSON WEBB,
" *Police Judge of the*
" *City and County of San Francisco.*"

which complaint was duly verified and filed in said Court, and thereupon a warrant in due form of law did issue thereon, and, under and by virtue of said warrant and not otherwise, is petitioner unlawfully imprisoned and restrained of his liberty, and is now held in custody by Patrick Crowley, Chief of Police of said City and County.

That petitioner avers that said ordinance of said Board of Supervisors hereinbefore first set forth, to-wit: Order Number 1691, was, and is, null and void, and in contravention of the provisions of the treaty hereinabove mentioned, and in contravention of the provisions of Article Fourteen of the Constitution of the United States wherein it is provided:

> " Nor shall any State deny to any person within its
> " jurisdiction the equal protection of the law."

And in contravention of the provisions of Section 1977 of the Revised Statutes of the United States, providing that:

> " All persons within the jurisdiction of the United
> " States shall have the same right in every State and
> " Territory, to make and enforce contracts, to sue and be
> " parties, give evidence, and to have the full and equal
> " benefit of all laws and proceedings for the security of
> " persons and property, as enjoyed by white citizens,
> " and shall be subject to like punishment, pains, penal-
> " ties, taxes, licenses, and exactions of every kind, and
> " to no other."

Wherefore, petitioner prays that a writ of *habeas corpus* issue herein, in the manner and form prescribed by law in such cases.

HALL McALLISTER,
Counsel for Petitioner.

DISTRICT OF CALIFORNIA,
CITY AND COUNTY OF SAN FRANCISCO. } *ss.*

Hung Hang having been duly sworn, says, that he is the petitioner in the above entitled matter; that he has heard read the foregoing petition, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

Subscribed and sworn to before me, this 1st day of March, 1883.

HUNG HANG.
[HIS MARK.]

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[SEAL.] J. H. BLOOD,
Notary Public in and for the City and County of San Francisco, State of California.